

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Monday, 17th May, 2021

Special Sitting

*(Convened via Kenya Gazette Notice
No. 4695 of 13th May, 2021)*

*The House met at the Senate Chamber,
Parliament Buildings, at 2.00 p.m.*

[The Speaker (Hon. Lusaka) in the Chair]

PRAYER

COMMUNICATION FROM THE CHAIR

CONVENING OF SPECIAL SITTING OF THE SENATE TO CONSIDER REPORT OF THE SPECIAL COMMITTEE ON THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE GOVERNOR OF WAJIR COUNTY, HON. MOHAMMED ABDI MOHAMUD

The Speaker (Hon. Lusaka): Hon. Senators, I welcome you to this Special Sitting of the Senate. On the request of the Senate Majority Leader *vide* letter Ref. No. SEN/SML/CORR, dated 11th May, 2021, and with the support of the requisite number of Senators, I appointed today, Monday, 17th May, 2021, a day for a Special Sitting of the Senate *vide* Gazette Notice No. 4695, dated 13th May, 2021.

In the Gazette Notice, I indicated that the Business to be transacted at this Special Sitting shall be consideration of the report of the Special Committee established to investigate the proposed removal from office, by impeachment, of the Hon. Mohammed Abdi Mohamud, the Governor of Wajir County.

You will recall that by a letter, Ref. No. SPK/WCA/SENATE/4/2021, dated 28th April, 2021, and received in my office on 29th April, 2021, the Speaker of the Wajir County Assembly informed me that at a Sitting of the County Assembly held on Tuesday, 27th April, 2021, the County Assembly approved a Motion, pursuant to Section 33(2) of the County Governments Act, for the removal from office by impeachment, of Honourable Mohammed Abdi Mohamud, Governor of Wajir County.

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In terms of Article 181 of the Constitution, Section 33(3)(a) of the County Governments Act, 2012 and Standing Order No.75(1)(a) of the Senate Standing Orders, the Speaker of the Senate, upon receiving notice of the resolution from the Speaker of the Wajir County Assembly, convened a meeting of the Senate on Thursday, 6th May, 2021, to hear charges against the Governor.

Consequently, the Senate, on Thursday, 6th May, 2021, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order No. 75(1)(b)(i), by Resolution, established a Special Committee comprising eleven (11) of its Members to investigate the proposed removal from office, by impeachment, of the Governor of Wajir County, and to report to the Senate within ten (10) days of its appointment, on whether it finds the particulars of the allegations to have been substantiated.

As you may be aware, both Section 33(6) of the County Governments Act and Standing Order No. 75(4) provide as follows –

“If the Special Committee reports that the particulars of any allegation against the Governor-

- (a) have not been substantiated, further proceedings shall not be taken under this section in respect of that allegation; or
- (b) have been substantiated, the Senate shall, after according the Governor an opportunity to be heard, vote on the impeachment charges.”

The Chairperson of the Special Committee will shortly lay on the Table of the House the Report of the Committee. Once it is laid, no action will be taken on the Report. The Senate will be suspended for one hour in order to allow Senators some time to go through the Report.

This is so because at the point at which the Report will be laid, it is not yet known to the House, which of the two procedures provided in Section 33(6) of the County Governments Act and Standing Order No. 75(4) will be applied. Conclusions and/or recommendations contained in the Committee Report will determine the procedure to be applied thereafter.

After Hon. Senators have had the opportunity of perusing the Report and establishing the findings of the Special Committee, the Senate will reconvene. In the event that the Special Committee reports that any particulars of the allegations have been substantiated, a Motion will be listed for consideration in a Supplementary Order Paper, which once prepared, will be circulated when we resume the Sitting.

Debate will then ensue in the usual manner and at the conclusion thereof, the Senate will proceed to vote on each of the impeachment charges, after according the Governor the opportunity to be heard.

In this regard, an invitation has been extended to the Hon. Mohammed Abdi Mohamud, Governor of Wajir County, to sit in the Gallery during debate on the Motion.

At the appropriate time before I put the Question on the Motion, the governor, if present, will appear before the Senate and be heard, either by himself or by legal representation.

I wish to inform the Hon. Senators that if the governor chooses to exercise this right to appear and be heard by the Senate, he shall be heard here, by either himself or his advocate, in silence. The governor's speech shall not be followed by any question or comment and the Senate shall, thereafter, immediately proceed to vote on each allegation found to have been substantiated.

In the event that the Special Committee finds that the charges against the Governor have not been substantiated further proceedings on this matter shall not be taken. I will give further guidance on how to proceed thereafter.

I thank you. Next Order.

PAPER LAID

REPORT OF THE SPECIAL COMMITTEE ON THE PROPOSED
REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE
GOVERNOR OF WAJIR COUNTY, HON. MOHAMMED
ABDI MOHAMUD

Sen. Omogeni: Mr. Speaker, Sir, I beg to lay the following paper on the Table of the Senate today, Monday, 17th day of May, 2021: -

Report of the Special Committee on the proposed removal from office, by impeachment, of H.E Gov. Mohammed Abdi Mohamud the Governor of Wajir County.

(Sen. Omogeni laid the document on the Table)

The Speaker (Hon. Lusaka): Order Senators. Order Sen. Cherargei.

An. Hon. Senator: He is excited.

The Speaker (Hon. Lusaka): You have decided to start very early.

Hon. Senators as I have guided, the Senate now stands suspended for one hour to resume at 3.40 p.m.

(The Senate adjourned temporarily at 2.40 p.m.)

(The Senate resumed at 3.50 p.m.)

COMMUNICATION FROM THE CHAIR

PROCEDURE TO BE FOLLOWED UPON TABLING OF THE
REPORT OF THE SPECIAL COMMITTEE ON THE PROPOSED
REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE
GOVERNOR OF WAJIR COUNTY, HON. MOHAMMED
ABDI MOHAMUD

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The Speaker (Hon. Lusaka): Hon. Senators, welcome back to the resumption of proceedings of this Special Sitting. I believe that you have now had opportunity to go through the Report of the Special Committee on the Proposed Removal from Office, by Impeachment, of the Governor of Wajir County.

As you may have noticed, the Committee has found the allegations in Charge No.2 namely, Abuse of office and gross misconduct against the Governor of Wajir County not to be substantiated. However, one of the allegations namely, Charge 1 on Gross Violation of the Constitution of Kenya 2010; the County Governments Act 2012; the Public Procurement and Assets Disposal Act, 2015; and the Public Finance Management Act, 2012 against the Governor of Wajir County to be substantiated.

Consequently, hon. Senators, the procedure to be followed in this case is that set out at Section 33 (6) (b) of the County Government Act and Standing Order No. 75 (4) (b) both of which provide as follows, and I quote-

“If the Special Committee reports that the particulars of any allegation against the Governor have been substantiated, the Senate shall after according the Governor an opportunity to be heard vote on the impeachment charges.”

Hon. Senators, that being the case, a Supplementary Order Paper has been circulated. The Chairperson of the Special Committee will give Notice of Motion for the Senate to consider and vote on the charge. Debate will then ensue on the Motion in the usual manner and at the conclusion thereof, the Senate will proceed to vote on the impeachment charge after according the Governor the opportunity to be heard.

A Roll Call Division will be taken pursuant to Standing Order No.83, and for the avoidance of doubt, the Motion before the Senate affects counties and voting will be by delegation.

I thank you.

Next Order.

NOTICE OF MOTION

THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF
HON. MOHAMMED ABDI MOHAMUD, THE GOVERNOR OF WAJIR COUNTY

Sen. Omogeni: Mr. Speaker, Sir, I beg to give the following Notice of Motion-

THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on Tuesday, 27th April, 2021, the Wajir County Assembly approved a Motion for the removal from office by impeachment, of the Hon. Mohamed Abdi Mohamud, Governor of Wajir County;

AND FURTHER, WHEREAS by letter Ref. No.SPK/WCA/SENATE/4/2021(1), dated Wednesday, 28th April, 2021, and received in the Office of the Speaker of the Senate on Thursday, 29th April, 2021, the Speaker of the County Assembly of Wajir informed the Speaker of the Senate of the approval of the Motion by the County

Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to Section 33(3) (b) ---

(There was a technical hitch)

The Speaker (Hon. Lusaka): What is your point of order, Sen. Wetangula?

Sen. Wetangula: Mr. Speaker, Sir, do you notice that there is an echo coming on the acoustics and it is distorting the sound and we cannot quite pick what the distinguished Chairperson is saying? Could it be corrected? I am sure we have standby technicians. Even your voice is even being echoed.

The Speaker (Hon. Lusaka): Yes. Is this sabotage or something?

(Laughter)

Can those concerned check the sound system.

Proceed.

Sen. Omogeni: Mr. Speaker, Sir, I will proceed from where I had stopped.

AND WHEREAS, pursuant to Section 33 (3) (b) of the County Governments Act, 2012 and Standing Order No.75 (1) (b) the Senate Standing Orders, by resolution on Thursday, 6th May, 2021, appointed a special committee comprising eleven of its Members to investigate the matter on the proposed removal from office by impeachment of the Governor of Wajir County and to report to the Senate within ten days of its appointment, on whether it finds the particulars of the allegations to have been substantiated;

AND WHEREAS, pursuant to Section 33 (4) of the County Governments Act, 2012 and Standing Order No. 75 (2), the Special Committee has investigated the matter and tabled its Report today, Monday, 17th May, 2021;

AND WHEREAS, pursuant to Section 33 (4) and (6) (b) of the County Governments Act and Standing Order No.75 (4) (b), the Special Committee has found that the particulars of Charge 2, namely, Abuse of Office and Gross Misconduct against the Governor of Wajir County has not been substantiated;

AND WHEREAS, pursuant to Section 33(4) and (6) (b) of the County Governments Act and Standing Order 75(4) (b), the Special Committee has found that one of the particulars of Charge 1 namely, Gross Violation of the Constitution of Kenya, 2010; the County Governments Act, 2012; the Public Procurement and Asset Disposal Act, 2015 and the Public Finance Management Act, 2012, against the Governor of Wajir County has been substantiated;

NOW THEREFORE, pursuant to Section 33 (6) (b) of the County Governments Act and Standing Order No.75 (4) (b), the Senate, after according the Hon. Mohammed Abdi Mohamud, the Governor of Wajir County, an opportunity to be heard, resolves to impeach the Governor of Wajir County on the ground of Gross Violation of the Constitution of Kenya, 2010; the County Governments Act, 2012; the Public Procurement and Asset Disposal Act, 2015 and the Public Finance Management Act, 2012.

The Speaker (Hon. Lusaka): Next Order.

MOTION

THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF
HON. MOHAMMED ABDI MOHAMUD, THE GOVERNOR OF WAJIR COUNTY

Sen. Omogeni: Mr. Speaker, Sir, I beg to move the following Motion on the Proposed Removal from Office by Impeachment of Hon. Mohammed Abdi Mohamud, the Governor of Wajir County-

THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on Tuesday, 27th April, 2021, the Wajir County Assembly approved a Motion for the removal from office by impeachment, of the Hon. Mohamed Abdi Mohamud, Governor of Wajir County;

AND FURTHER, WHEREAS by letter Ref. No. SPK/WCA/SENATE/4/2021(1), dated Wednesday, 28th April, 2021, and received in the Office of the Speaker of the Senate on Thursday, 29th April, 2021, the Speaker of the County Assembly of Wajir informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to Section 33(3) (b) of the County Governments Act, 2012 and Standing Order No. 75 (1) (b) the Senate, by resolution on Thursday, 6th May, 2021 appointed a special committee comprising eleven of its Members to investigate the matter on the proposed removal from office by impeachment of the Governor of Wajir County and to report to the Senate within ten days of its appointment, on whether it finds the particulars of the allegations to have been substantiated;

AND WHEREAS, pursuant to Section 33 (4) of the County Governments Act, 2012 and Standing Order No.75 (2), the Special Committee has investigated the matter and tabled its Report today, Monday, 17th May, 2021;

AND WHEREAS, pursuant to Section 33 (4) and (6) (b) of the County Governments Act and Standing Order No. 75 (4) (b), the Special Committee has found that the particulars of the charge namely, Abuse of Office and Gross Misconduct against the Governor of Wajir County has not been substantiated;

AND WHEREAS, pursuant to Section 33 (4) and (6) (b) of the County Governments Act and Standing Order No. 75(4) (b), the Special Committee has found that one of the particulars of the charge namely, Gross Violation of the Constitution of Kenya, 2010; the County Governments Act, 2012; the Public Procurement and Asset Disposal Act, 2015 and the Public Finance Management Act, 2012, against the Governor of Wajir County has been substantiated;

NOW THEREFORE, pursuant to Section 33(6) (b) of the County Governments Act and Standing Order No.75 (4) (b), the Senate, after according the hon. Mohammed Abdi Mohamud, the Governor of Wajir County, an opportunity to be heard, resolves to impeach the Governor of Wajir County on the ground of gross violation of the Constitution of Kenya 2010, the County Governments Act 2012, the Public Procurement and Asset Disposal (PPAD) Act 2015 and the Public Finance Management PFM Act 2012.

Mr. Speaker, Sir, I will begin by thanking the Members who served in this Special Committee. I recognize the contribution of Sen. Kihika, Sen. (Eng.) Hargura, Sen. Mwangi, Sen. Linturi, Sen. Outa, Sen. Sakaja, Sen. Boy, Sen. Zawadi, Sen. Were, and Sen. Kavindu Muthama. When we held our first meeting, I was honoured to be elected as the Chair of this Special Committee. I thank them for shown trust and confidence in me to Chair the meetings.

We worked very intensely during the consideration of this impeachment process. This work would not have been successful without the support that this Committee received from members of our secretariat.

In that regard, in a very special way, I recognize the contribution that was made by the members of the Senate secretariat who was ably lead by the Director of Legal Services, Dr. Okello. We recognize their support, effort and also extend our warm compliments for the work that they did.

Mr. Speaker, Sir, I confirm to the House that when we were appointed, we initiated a programme of activities that were adopted by this Committee as can be evidenced in annexure 6.

We took into account the fact that the Governor needed to be accorded a fair hearing through his counsel, and we also took note of the fact that the Members of the County Assembly (MCAs) of Wajir needed to be accorded a fair hearing.

I confirm that the County Assembly of Wajir appeared before us and they called three witnesses who testified. The advocate for His Excellency the Governor was

accorded an opportunity to test the veracity of the evidence that was tendered before the Senate through cross examination.

I also confirm that we accorded the Governor an opportunity to give his address to the Committee and call witnesses in response to the charges he was facing.

In this regard, I thank the industry and help that was extended to this Committee by the team of able lawyers who appeared for the parties herein led by the team that appeared for the County Assembly of Wajir that was led by Senior Counsel Ahmednassir Abdullahi and the defense team of the Governor that was led by Counsel Paul Nyamodi.

This Committee greatly contributed to their submissions in preparation of this Report.

Mr. Speaker, Sir, we proceeded to a working retreat for three days, from Friday 14th April to Sunday 16th April. I thank the Members who stayed for all the sessions.

We had a number of preliminary issues that were raised by the parties before us. The only one I want us to note is that there was a request to summon one witness to appear before us. However, we were not able to have that witness served with summons and appear before us simply because of the limited time the Committee had to conduct its proceedings.

Later on, I will highlight the observation of this Committee on the issue of the time that is accorded to it. However, we were able to admit one affidavit that was filed by the County Assembly after according both parties a hearing.

The charges that were facing the Governor were basically two. The first charge was gross violation of the Constitution of Kenya 2010, the County Governments Act 2012, the PPAD Act 2015 and the PFM Act 2012.

In the case before the Special Committee, the County Assembly of Wajir put forward 15 allegations in support of this charge. I will not go into the details of all the allegations and observations of the Committee, but in summary-

1. Failure to account for the financial resources allocated to the county;
2. Lack of accountability in the management of county resources;
3. Failure to draft the medium-term strategy for the financial year 2020/2021;
4. Violation of articles 176(1) and 165 of the Constitution;
5. Failure to establish the County Budget and Economic Forum;
6. Failure to deliver the annual state of the county address;
7. Failure to submit the annual report of the implementation status of county policies and plans;
8. Failure to establish and audit committee;
9. Failure to seek approval of payments out of emergency fund
10. Operation of various bank accounts;
11. Violation of regulation 25(1)(b) of the Public Finance Management (County Government) Regulations, 2015;
12. Violation of Section 119(5) of the Public Finance Management Act, 2012;
13. Violation of Articles 201(a)(d) and (e), 226(5) and 227(1) of the Constitution of Kenya;

14. Violation of Article 227 of the Constitution of Kenya and the public procurement and Asset Disposal Act, 2015;

The last allegation was on violation of the right to health of the people of Wajir County.

Mr. Speaker, Sir, the second charge was abuse of office/gross misconduct. On this particular allegation the charges were-

- (1) Abuse of power and authority
- (2) Violation of Article 73 (2) (b) of the Constitution
- (3) Violation of Section 59 (1) (b) of the County Government Act

We were able to go through all the allegations and because of time, I will not go into very big details on all of them. Suffice to say that of all the 15 allegations in support of the first charge, the Committee was not able to find that there was any substantiation against 13 allegations and the same were dismissed. The Senators, who have the Report, will see the findings of the Committee.

Mr. Speaker, Sir, on failure to account for the resources allocated to Wajir County, this allegation was not proved and the Special Committee dismissed the same.

On lack of accountability in the management of County resources, the Committee went through the evidence tendered. The verdict of the Committee was that the allegation was not substantiated.

On allegation of failure to draft the Medium-Term Strategy for Financial Year 2020/2021, the Committee went through the evidence that was tendered by the Wajir County Assembly. The Special Committee returns the verdict that it found the allegation not proved and, therefore, not substantiated.

On violation of Articles 176(1) and 185 of the Constitution, again, the Committee went through evidence placed before it by Wajir County Assembly. It arrived at a finding that the allegation was not proved and, therefore, it was not substantiated.

On the allegation of failure to establish the County Budget and Economic Forum (CBEF), the Committee observed that the Governor had taken steps towards establishing CBEF. However, it had been hampered by failure to attract qualified candidates for those positions. It was the finding of the Committee that that particular allegation was not proved and substantiated and, therefore, not upheld.

On Allegation No.6 on failure to deliver Annual State of the County Address, the Committee finds that from the evidence adduced, the County Government Act, 2012 does not specify the State of County Address that ought to be delivered and where it should be delivered.

Mr. Speaker, Sir, this Committee observed that this is an allegation that has featured in virtually all the impeachment proceedings that have appeared before the Senate. It was noted that going forward, there is need for the Senate to consider coming up with legislation that will properly guide the implementation of that section of the law.

When we went through the first impeachment and even the one for Hon. Waiguru, it was noted that most governors who appear before the Senate have consistently taken the view that the law does not obligate them to appear before the County Assembly. Also,

the requirement of making an address to the county can happen even during public holidays.

Therefore, we noted there is a big gap in terms of what the law anticipates. This Committee recommends that this Senate should come up with a legislation that will clearly address this issue.

Another allegation is failure to submit annual report of the implementation status of the county polices and plans. Having gone through the provisions of the law and the obligation placed in the hands of the Governor, the Committee arrived at a finding that the Governor had not complied with this requirement under Section 30(2)(j) of the County Governments Act, 2012. He has failed to submit the annual report on the implementation status of the county polices and plans.

The Committee was not persuaded that other plans that do not specifically respond to this obligation can be a substitute for this very clear statutory requirement. However, the Committee observed that not each violation or failure to observe a particular section of a statute should lead to impeachment.

The Committee looked at the precedent that has been set by past impeachments and arrived at a decision that what should lead to an impeachment of a governor should be gross violation of the Constitution.

The Committee was, therefore, of the view that though clearly the Governor had not complied with the provisions of Section 30(2)(j) of the County Government Act, 2012, this violation per se, does not meet the threshold for the impeachment of the Governor.

Therefore, though the allegation was proved before the Committee, we found that it does not meet the threshold for impeaching a Governor. Therefore, the Committee was of the view that this particular allegation should not return a verdict of removal.

Mr. Speaker, Sir, several governors have appeared before the Senate in past impeachments. We cited the case of the impeachment of the Governor for Taita Taveta and the Governor for Kirinyaga counties. We found that in both impeachments, there were statutes that were violated by these governors but the Senate returned a verdict that that failure to observe the provisions of those statutes were not gross enough to warrant the impeachment of a governor.

On Allegation No.8, failure to establish an audit Committee, the Committee went through this allegation. It arrived at the decision that the allegation was not proved as against the Governor. Therefore, the same was dismissed as having not been substantiated.

On Allegation No.9, failure to seek approval of payment out of emergency fund, the Committee went through the evidence tendered before it. There was a conflict on interpretation of the law to meet the Public Finance Management (PFM) Act and the law that has been enacted by the County Assembly, the County Disaster Management Act.

Mr. Speaker, Sir, this Committee established as a matter of fact that the provisions of the County Disaster Management Act did not have the same requirement as the PFM

Act. Therefore, the allegation that the Governor did not seek approval were premised on wrong provisions of the law.

If anything, it was noted that the County Assembly did note that oversight on the County Disaster Management Act and the same has since been amended to bring it in conformity with the PFM Act. It now obligates the Governor to seek approval within two months after making payments.

Therefore, the Committee was of the view that it would not be constitutional to hold the Governor liable for an offence that was not an offence as at the time it was alleged to have been committed.

(Loud consultations)

The Speaker (Hon. Lusaka): Let us consult in low tones, hon. Senators.

Sen. Omogeni: Allegation No.10 which is operation of various bank accounts in the local commercial banks, the Committee found as a fact, that the county operates some accounts at local commercial banks. However, it found that operating those bank accounts was not unconstitutional, neither were they against the law.

The reason is that the accounts are in line with the donor funded projects, like the Danish International Development Agency (DANIDA) or for health facilities. The health facilities have been given the leeway to generate money and they bank them into specific accounts, so that an assessment can be made on their sustainability. So, this allegation was found not to be substantiated.

On allegation of violation of Regulation 25(1)(b) on the public Finance Management, County Regulations, 2015, again without going to details, the Committee went through the evidence tendered before it. It returned a verdict that the same was not proved and therefore, not substantiated.

On allegation relating to the violation of Section 119(5) of the PFM Act, 2012---

(There was a technical hitch)

Mr. Speaker, Sir, I was on Allegation 12. Before the microphone went off, I was making an observation that the Committee went through the evidence that was tendered before it and returned a verdict that this particular violation was not proved.

On Allegation No.13, which is violation of Article 201(a), (d) and (e) and Article 226(5) and 227(1) of the Constitution, having gone through---

(Loud consultations)

The Speaker (Hon. Lusaka): Let us consult in low tones.

Sen. Omogeni: Mr. Speaker, Sir, on Allegation No.13, the Committee went through the evidence that was tendered before it and found that this allegation was not proved and the same was therefore not substantiated.

Allegation 14, which is violation of Article 227 of the Constitution and the Public Procurement and Asset Disposal Act, the Committee having gone through the evidence that was placed before it found that this allegation was not proved.

Mr. Speaker, Sir, having found that the 14 allegations had not been proved, the Committee made some observations. The first observation is that there is need for the Members of the County Assembly (MCAs) to be taken through some induction on how to effectively conduct impeachments before the county assembly.

It was the view of the Committee that a number of allegations that were leveled against the governor relate to a number of accounting officers who should take personal responsibility especially on issues dealing with public finance management and public procurement laws. However, there is a general misconception that in every transgression happening in our counties, governors must be held to be vicariously liable.

Mr. Speaker, Sir, the second observation this Committee made is that there may be need to review the period of 10 days that is given to the Senate to receive the impeachment decision from the county assembly and for the Committee to consider, conduct a trial and render a report to the House.

This is because, like in our case we had a situation where we issued summons for a witness to appear before this Special Committee but we only had one day within which to execute the summons and for the witness to appear before this Committee which was not possible.

We are making a strong recommendation to the House that we need to review our Standing Order No.75, so that there is adequate time given to the Committees to conduct the impeachment hearings. The Committee has proposed a period of 21 days.

Mr. Speaker, Sir, another observation is that Standing Order No.75 makes it obligatory that if the Committee finds that the allegations have not been substantiated, then that marks the end of that matter. We felt that that Standing Order needs to be reviewed so that even where the Committee makes a finding that a particular allegation has not been substantiated, then the House as a Senate should be given an opportunity to debate and make a vote on a matter.

Before I go to Allegation 15 on count one, I wish to make a few comments on Count No.2. Count No.2 was abuse of office/gross misconduct. This matter was fairly emotive.

The allegation was that the Governor had abused power and authority by delegating the management of the county affairs to the First Lady of the Wajir County. However, when we sought for evidence to be placed before us, we were told that the First Lady of Wajir County---

(Loud Consultations)

The Speaker (Hon. Lusaka): Order Senators. Let us consult in low tones. They are reading and you will be taking a vote based on what is being said.

Sen. Omogeni: Mr. Speaker, Sir, when we sought for evidence from the MCAs in support of this allegation, we were given examples which caused a lot of excitement and a lot of serious concern from the women Senators.

That the MCAs attended a meeting at the residence of the governor where the First Lady was in attendance. The question was; if the MCAs of Wajir elect to pay a courtesy call to the residence of the Governor of Wajir, do they expect the First Lady to take leave of absence from her own house?

Mr. Speaker, Sir, if anything, the Committee was of the view that if MCAs visit the governor's residence, then the First Lady has a right to be there and serve food to the MCAs. We also wanted to know whether this was the official residence or the private residence of the governor. We were told that these meetings took place at the private residence of the governor.

Therefore, in protection of the womenfolk of this country including my mother, spouse and daughters, we found these allegations to be frivolous, not proved and not substantiated.

The second particulars was that the governor had met MCAs in a hotel in the presence of the First Lady. We sought to be given minutes to confirm whether these meetings were official or not and there were no minutes. We sought for any photos in proof that these meetings took place in any hotel, again we were not given any photos.

These made a mere allegation to us and we did submit and took judicial notice of the fact that the governor of the county government of Wajir has all the right under the sun to be romantic to his wife and to have her in his presence in his house and to go out, have coffee with her in hotels. If anybody wants this allegation to be proved in future, this should happen within the realms of official functions including where there are official meetings.

If it is in a hotel, there should be minutes confirming that the First Lady of that particular county attended the meetings and that she actively participated in the proceedings and that she took a vote or guided the governor in making a decision. That was not proved.

The other allegation on this was that some money was banked by the First Lady to her personal account and that a person named Jamal, the one that was summoned to appear before us, banked some money to the personal accounts of the First Lady of Wajir County. In support of this allegation, there was an alleged bank statement that was produced before this Committee. We did interrogate the veracity or authenticity of that statement and the following issues came to light.

The person who appeared as witness before the Senate Committee alleged that he got copies of those statements from the bank during the month of April this year. However, on perusal of those statements, it came to the attention of the Committee that those statements, indeed, bear the signature of the Ethics and Anti- Corruption Commission (EACC) dated January, 2019.

Therefore, on the credibility of the witness, the Committee was not convinced how a statement that was bearing the stamp of EACC, stamped January, 2019, could have been obtained from the bank during the month of April, 2021.

Mr. Speaker, Sir, we tried to seek from the witness the source or the person who gave him copies of those statements, and that was not proved. Also, the Committee took note of the fact that if this matter has been pending with EACC for a period of two-and-a-half years, it is that particular body that can give a proper status on what is the status of any investigations, if any, against the First Lady of the County of Wajir.

Therefore, all those allegations of abuse of power and authority were not proved and the same were thus not substantiated.

On the second allegation on Violation of Article 73 (2) (b) of the Constitution, without going into details, this is an Article dealing with Chapter 6 of our Constitution on issues of impartiality, nepotism and the likes. On this particular allegation, the Committee was of the view that no evidence was tendered before the Committee. There was no proof of any nepotism from the part of His Excellency the Governor. Therefore, this particular allegation was not proved and substantiated.

Mr. Speaker, Sir, on the third allegation, Violation of Section 53 (1) (b) of the County Government Act, 2012, the Committee finds that this allegation was not proved and, therefore, the Committee returns a verdict that the same was not substantiated.

Mr. Speaker, Sir, we want to make some observations to the House. That, some of the charges relating to abuse of office relate to violations of the Public Procurement and Asset Disposal Act and the Public Finance Management Act.

The Committee noted that the Public Procurement and Asset Disposal Act is a stand-alone Act that has very detailed procedures on how procurement is done in public offices. This includes putting in place tender committees in a process that a signature of an accounting officer brings to an end the whole circle of procurement.

Mr. Speaker, Sir, as a Committee, we were not able to trace any nexus between the procurement of services that took place in the County Government of Wajir and the Governor. Therefore, we found that this allegation was not proved.

Mr. Speaker, Sir, another issue that featured is a situation where authority is sought from the Controller of Budget (CoB) to pay particular pending bills of listed companies on letters that are addressed to the CoB.

Consent is sought before the county can make payments. The allegation here was that there is alleged corruption taking place in the County Government of Wajir. This is because once the approval of the CoB is given some companies get substituted with the ones that were not appearing on the list that was approved for payment by the CoB.

Mr. Speaker, Sir, though we found as a fact that this maybe wrong, we were not able to find any specific provision of the law that was violated. In fact, we took judicial notice of the fact that this is a common occurrence in all Government offices. This is because at times payments can change depending on the urgency of the matter at hand or change of priority.

We did make a recommendation that this matter should be addressed either by amending the Public Finance Management (PFM) Act or through a Bill that is pending before the National Assembly; The County Prompt Payments Bill. As of now, we did not find any law that was clearly violated. We made that observation and recommendation to the House.

Mr. Speaker, Sir, turning back to Allegation 15, on Count One; Violation of Article 43 (1) on the right to access health services, this was a fairly emotive matter that was debated for almost two days.

First, we went through other past impeachments before this House. We made an observation that in a number of those impeachments, there are a number of governors who have been brought before the Senate on allegations of violation of that Section of the Constitution. Though there has been a finding, it has not led to impeachment.

Mr. Speaker, Sir, we cited the case of the Governor of Kirinyaga County who had the health system ground to a halt. We realized that this is a common problem affecting all the counties.

We were trying to balance between the right that is guaranteed to Kenyans, that is, to access quality health services and also balancing that we should not reduce the threshold of impeaching governor too low. This is because it should be slightly above the balance of probability, but also slightly below beyond reasonable doubt. We felt that the Committee should tread with caution on this particular matter.

Mr. Speaker, Sir, there were two issues that were cited by the Members of County Assembly (MCA) in proof of this charge. The first one is that an ambulance that was owned by the County of Wajir broke down and instead of the Governor availing enough petrol so that it is able to render services to the citizens of Wajir, citizens were called upon to fuel this ambulance. There was an allegation that they even bought tyres for that ambulance.

I would not want lawyers to take me to task on this allegation. We took the words of the MCAs. We were not able to get clear particulars on this allegation. However, the Committee took the view that health is very important and that there should be more demand of accountability from His Excellency the Governor.

In response to this, His Excellency the Governor put a very spirited defense before the Senate. The executive submitted to the Committee that they had made great strides on the improvement of the health status of the County of Wajir. They said that in total, they had 14 ambulances. They also told the Committee that Wajir is a vast county. Therefore, incidences of breakdown of ambulances is anticipated.

In support of the allegation that the health situation is not that bad, they had employed 50 qualified doctors, of which 25 have been sent abroad for further studies. They have been bonded to come back to work for the county on their return.

They gave us a chart to show improvement on their maternity; the status of maternal health care for its people. They also gave a mitigation on issues dealing with COVID-19.

Mr. Speaker, Sir, they were not able to procure spare parts for their machine that broke down from South Africa due to the COVID-19 pandemic.

The other allegation was that there is a medical practitioner who passed on due to lack of oxygen in the hospital. The defense in response to this allegation was given to the Committee by Dr. Dahir Somow who is the County Director of Health Services.

He stated that the death was unfortunate and was not an exception for the County of Wajir. He did submit before the Committee that the county has over 122 health facilities that are operational and serve a population of 769,000.

He noted that though it is not good enough, it is not way off when compared to other counties. He also stated that they were in the process of working on the improvement of other facilities. This was a stated given to us by Dr. Somow without really going into details. We did not get detailed evidence.

On the empirical evidence that was placed before us, it was the contention of the county government of Wajir that health had improved on antenatal clinics from 49.2 per cent in 2017 to 86.1 per cent in 2021.

He also stated that there had been an increase in the number of children getting immunization for Diphtheria, Pertussis, and Tetanus (DPT) vaccines from a low of 62.7 per cent to 75 per cent.

He also noted that in terms of skilled birth attendants, the ones that give birth at hospitals, they had increased from a low 19 per cent to a high of 49 per cent.

Before I finish, they also submitted that the issue of health is facing a challenge from the Managed Equipment Services (MES) because they are forced to procure spare parts from a particular company and they said this is a problem that affects all counties across the country.

The other issue that pinned the county government down was the issue where the transformer of 250KVA broke down in the county and the county was not able to get a replacement. It was alleged that the amount required to fix this particular machine is Kshs5.7 million.

The Committee, therefore, took the view that the government had not acted prudent on this matter and is one where an example ought to be set.

I would like to make a confession to the House that for us who are lawyers this was not easy. We need to be careful when we set the threshold on impeachment so that not on a balance of probability, but on a power of balance of probability, but again not beyond reasonable doubt.

There was fear and I hope this House will debate, that if this particular Article 43(1) was to be impeached against governors, there is no governor who may be in office. It might affect all governors in office.

Therefore, I invite the House to a robust debate on this particular allegation and also on the threshold that this House has set before on issues of impeachment of governors so that there is consistency.

There was an observation made by the Committee that we need to be careful so that we do not expose ourselves as having violated the provisions of Article 27 on

discrimination, in that there are a number of governors that have appeared before the Senate with the violations touching on Article 43(1), but have gone scot-free.

However, I want to invite the House to have a robust debate on this particular one. However, the Committee finally arrived on a finding to impeach His Excellency the Governor for Wajir County on this allegation, which is on count one allegation, number 15.

We made other general observations that we felt should not reach this House that the MCAs should exercise their oversight role at the county level, including this case where there were accusations levelled against specific county accounting officers; that is the Chief Officers.

We have made an observation that MCAs should take note that it is not the Constitutional mandate of this House to deal with violations of County Accounting Officers. This is a matter that can be dealt with by the counties at the county level.

On issues of reshuffling of chief officers that featured, the Committee made an observation that these are matters that should not find their way to the Committee. The County Assembly needs to draw a distinction between the work of the County Service Public Board (CSPB) and the work of the governor within the counties. I move that the House confirms our Report that Allegation No.15 has been proved.

Before I finish, there is another issue that arose on public participation. The Committee made an observation that on recall for elected Members of Parliament, Senators and MCAs, the citizens cannot successfully prosecute a recall clause unless they collect signatures from the citizens of the either the county ward, the constituency or the county.

We made an observation that going forward, this House should consider that the task of impeaching governors should not be left solely at the discretion of MCA. There should be a law that obligates those who are proceeding with impeachment motions against governors to collect signatures from members of that particular county who elected the governor.

With those remarks, I ask my good friend, Senator for Marsabit, Sen. (Eng.) Hargura to second.

I thank you.

Sen. (Eng.) Hargura: Thank you, Mr. Speaker, Sir, I would like to second the Special Committee Report on impeachment of the Governor of Wajir County.

The County Assembly brought many allegations under two charges. I would like to advice the County Assembly that they are the first line of oversight. In case there are issues, they have to first perform their duties before they bring these allegations to the Senate.

The law is clear that if it is a County Executive Committee Member or an accounting officer who is the Chief Officer who has not performed his or her duties, then they have the powers to summon or invite. Once they find that person culpable, then they have the powers to impeach the person and have him out of office and recommend the same

to the governor. In the event that maybe the governor has refused to implement the ruling of the House, then it can be an issue, which can be taken against the governor.

The first impeachment of Governor Wambora, for example, among other charges, he refused to sack the county secretary who was impeached by the county assembly. In that case, they had done their part and it was the governor who was not ready to do his part, and that is why it was an impeachment ground.

In this case, the county assembly brought issues, which could be attributed in law to have been the failures of the county executive Members or accounting officers, which cannot be connected to the governor. That is why in cases where we found the law was broken, we did not penalize the Governor.

The other allegation was based on the report of the Auditor-General. However, the Wajir County Assembly has the responsibility to take the audit report and summon the relevant CECM to address the issues raised in the audit report, so that if somebody has broken the law, they are held accountable. It is difficult to pin down the Governor on the shortcomings of his officers because the law is clear that the officer in charge should take responsibility.

Mr. Speaker, Sir, on Allegation 14, which carried a lot of the issues affecting procurement, we made conclusion that the law had been broken in certain instances. For example, the procurement of *ugali* flour was overpriced. Instead of pricing a bale of the maize flour at Kshs1,600, it was procured at Kshs3,500. That is a clear violation of the law. Section 106(4) of the Public Procurement and Asset Disposal (PPAD) Act, 2015 states that:

‘Where the lowest price is above the prevailing market rates, the request for quotations shall be cancelled or terminated in accordance with the cancellation and termination procedures set out in this Act’

If the price of an item is known and the supplier quotes such a high price, as was the case in this instance, the procurement officer should have cancelled the award of the tender. Section 54(4) of the Public Procurement and Asset Disposal (PPAD) Act, 2015 states that:

‘Public officers involved in transactions in which standard goods, services and works are procured at unreasonably inflated prices shall, in addition to any other sanctions prescribed in this Act or the Regulations made thereunder, be required to pay the procuring entity for the loss resulting from their actions.’

The law is very clear in cases where a breach has occurred. The public officer involved in that procurement should be held liable. I urge the Wajir County Assembly to take action upon the officers implicated because the officers in question are under their purview of oversight. Transferring blame to the Governor for breaking the procurement laws in such an instance will not suffice.

I urge all the county assemblies to consider the reports of the Auditor-General concerning the expenditure of funds in their counties, digest and summon the relevant officers to account. In cases where the county assemblies have taken action against the

relevant officer and the Governor fails to implement, then the governor can be held accountable for not taking action against his officer.

The Committee advised that the County Assembly takes action against public officers who break procurement laws. By doing that, they can remedy the breaking of procurement laws at the county level, instead of escalating it to the Senate.

Mr. Speaker, Sir, I would like to reiterate the observations of the Mover of the Motion. The timeframe of carrying out the impeachment process is not enough. We need to amend our Standing Orders, so that we have enough time to consider matters of impeachment whenever they are brought before the House.

Standing Order 75 (4) (a) states that: -

‘If the special committee reports that the particulars of any allegation against the governor—

(a) have not been substantiated, no further action shall be taken under this section in respect of that allegation;’

My understanding is that the Special Committee, just like any other Committee of the House, is working for the House. Whatever the Special Committee establishes should be brought to the House, which will have the final say. In this instance, if the Committee did not substantiate any allegation, the report should be submitted to the House for debate. We could decide that if two-thirds majority of the House votes to overturn the findings of the Committee, the same should be implemented. If that is implemented, more Members would prefer impeachment hearings to be conducted through committees, since the proceedings will not be terminated using the provisions of Standing Order 75(4) (a).

In the charge against abuse of office, very emotive issues were raised. The Senate will in future have to ask for facts before making any conclusion. It is for that reason that we insisted that any information provided should be admissible to us. For instance, in the case of bank statements that were presented by the Wajir County Assembly, we inquired how the documents were acquired, but the witness was unwilling to share the source and so, we could not rely on the same. Whenever a county assembly decides to prosecute its case, it must give us enough information for us to make the decision they want us to make. The county assemblies have to push and argue their case. It is not the work of the Special Committee to argue their case for them.

In the case of Allegation 15 that has been substantiated by the Special Committee, we saw failure in the health sector of the county, which is a devolved function. It is one of the major cornerstones of devolution. Whenever the health system of a county is going down and that county gives more than 20 per cent of its budget to health, you are left to wonder. We were told that health workers are on strike and the main equipment in a number of the hospitals are not working at a time when we are dealing with the COVID-19 pandemic.

The County Government of Wajir received Kshs194 million to help in the fight against the COVID-19 pandemic. With such an amount, we expected the oxygen plant and other major equipment to be in operation. We were given instances where people, including a health employee, passed on due to lack of oxygen in the hospital, yet the

County Executive of Wajir says that the employee of the health department passed on due to power failure.

A gadget costing about Kshs5.8 million was required to connect power and have the 1,000 KVA generator to be connected to all electronic equipment in the hospital. We wondered what the Wajir County Executive did with the Kshs194 million that they were unable to procure a gadget costing Kshs5.8 million. That was a matter of life and death for the people of Wajir County. The Committee considered that issue as a gross violation because the Governor failed to protect the lives of his people. We urge the House to look at the report of the Special Committee and agree with us.

Mr. Speaker, Sir, on the issue of payment of contractors, which is listed at Allegation 14.1, where the county sent a requisition to the Controller of Budget to authorize the withdrawal of funds. The requisition had a list of the contractors to be paid. When money is requisitioned and a less amount than the request is obtained, the county government officer in charge said that the county is not obliged to pay the same people whose payments were authorized by the Controller of Budget. We wondered what the reason was behind forwarding a list to requisition for payment if the same people will not receive their payments. I urge this House to take up the issue with the Controller of Budget and tell us whether that is the position in law.

As the Chairperson said, it is morally wrong, but we do not see any law that prohibits it.

Personally, I feel that even the law has to be in line with that morality because in this country we had a very long history of misapplication of public funds, which is why all these laws are in. That is why even the Office of the CoB has been created, so as to streamline all these processes. If we follow the law half way by misapplying the money once we get it, then that law needs to be checked.

We stopped at saying somebody should be held accountable because of that doubt in law which we need to confirm from the CoB so that we get the very clear position so that this abuse of that requirement does not continue because it is happening in many counties.

Mr. Speaker, Sir. with those few comments, I second and urge the House to adopt this Report of the Special Committee.

(Question proposed)

(Interruption of Debate on the Impeachment Motion)

The Speaker (Hon. Lusaka): Proceed, Sen. M. Kajwang’.

POINT OF ORDER

THE RIGHT OF GOV. MOHAMMED ABDI MOHAMUD TO BE
HEARD BEFORE DEBATE ON THE IMPEACHMENT MOTION

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Sen. M. Kajwang’: Mr. Speaker, Sir, I rise on a point of order. Our duty today was to receive the Report of the Special Committee, which is before us. It is a remarkable report that was signed by all Members of the Committee.

Our other duty was to listen to the Governor in his defence, consider all the facts before us and finally to take a vote. I needed your guidance whether this is the time where we are calling the Governor, so that we do not have to debate before we have listened to him.

The Speaker (Hon. Lusaka): Our procedures and the way we have done it in the past has been that the Governor has the last word after those who wish have made their contributions.

Sen. Faki: On a point of order, Mr. Speaker, Sir. I beg to move that we proceed to hear the Governor, unless any Member has a burning issue to debate.

The Speaker (Hon. Lusaka): I can see Sen. Orengo.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I think there is some good reason in what Sen. Kajwang’ is saying because it must never be lost that now we are like the court itself. We are going to reach a verdict. Before we say everything good or bad, we may be persuaded either way.

I think it is important to give the Governor a chance and then we will be contributing to the Motion on the basis of what we would have heard from him as against us talking and then eventually, the Governor speaks and we cannot come back and comment on what he will have said.

The procedure may be there from the past, but I do not think it is stipulated in the Standing Orders that the Governor is the last person to speak. Even if he was the last person to speak, I think the rules of natural justice would apply because we are not accusers, but we are hearing the case of the Governor and then making the decision.

We have heard the Committee and its findings and maybe the Governor may have a comment on that report, and then we can debate the Motion on the basis of what we would have heard from the Governor.

Sen. (Dr.) Ochillo-Ayacko: Thank you, Mr. Speaker, Sir. This is a matter that this House rightly asks you to apply your discretion and depart from precedent. It is not proper for us to give our opinion and positions before hearing any additional facts the Governor may have. It again flies on the face of Fair Administrative Actions Act when we comment before hearing the full story.

Just like Sen. M. Kajwang’ and Sen. Orengo, I implore you to depart from the traditional convention and have us hear the Governor, so that we can contribute from the position of knowledge and facts.

Sen. Wamatangi: Mr. Speaker, Sir, I rise to support the position as expressed by my colleagues and as proposed by Sen. Faki. For all intents and purposes, whatever the Governor will be saying at the point when he is invited, be it the equivalent in court proceedings of either a mitigation or defence, it is supposed to help his case.

The people who will be making the decision finally after hearing what the Governor has to say on the charge that has been substantiated--- I support the position

that the most prudent thing to do, so that the process can be as flawless and just as it should be, is to allow the Governor to come to the House and make his remarks or comments. This is so that we should be knowledgeable of all the things he would want to say and then we can proceed to make a decision.

We should be fully knowledgeable of all the things the Governor would want to say and then make a decision.

I support.

The Speaker (Sen. Lusaka): Sen. Khaniri, proceed.

Sen. Khaniri: Mr. Speaker, Sir, Sen. Faki moved that we hear the governor and he was not seconded. I want to be on record that I am seconding him. The Standing Orders are not very clear on this particular procedure. It just says that having substantiated, the Senate shall after according the governor an opportunity to be heard, vote on the charges.

Some of the matters have been substantiated, and I think it is only fair that before we take a vote--- Of course, a vote will be preceded by debate if there are those who wish to make some contributions and observations. Therefore, it is only fair that we listen to both sides.

Mr. Speaker, Sir, my colleagues have put it very well and the lawyers who have spoken before me, that in this particular matter we are like the judges, and therefore, we cannot give our verdict having only listened to one side of the story. It is just fair that at this stage, we bring in the governor to make his address, then you can now open to Members for debate and voting.

Thank you.

The Speaker (Sen. Lusaka): Sen. Cherargei, proceed.

Sen. Cherargei: Mr. Speaker, Sir, thank you. Maybe to add on that and before we decide, we have the Committee Report that has already been tabled. I do not know when the governor speaks--- I have also read the Standing Orders---

(Sen. Murkomen stood in his place)

Mr. Speaker, Sir, protect me. I do not know why Sen. Murkomen is---

The Speaker (Sen. Lusaka): Sen. Murkomen, you are wandering with a lot of drama. Sen. Cherargei, proceed.

(Laughter)

Sen. Cherargei: Mr. Speaker, Sir, I have read the Standing Orders and it is not clear as Sen. Khaniri has said. However, my opinion is that there is a report that is already here. We want the governor to speak, but I think to be neat, it is better to react and respond to what the governor is saying *inter alia* with the Report that has been tabled by the Committee. This is so that we can be neat then we react and vote.

I support.

The Speaker (Sen. Lusaka): Sen. Cheruiyot, proceed.

Sen. Cheruiyot: Mr. Speaker, Sir, thank you for this chance. The right to a fair trial is a cardinal principal in our Constitution. What will be a fair trial to the governor in light of what has happened, bearing in mind our Constitution, the Standing Orders and all matters before us?

At 2.30 p.m. when we walked in this afternoon, those of us who are not Members of this Committee received the Report. The Report almost has 300 pages. I know that Sen. Wetangula has tried to convince the House before that lawyers have a formula for reading faster than the rest. There is no scientific evidence to confirm that. We can even put the lawyers in this House through a test of the 300 page plus document. They will do just as the rest of all of us.

Mr. Speaker, Sir, what will be a fair trial to the Governor of Wajir County? I want to agree with the proposal by Sen. Faki, as seconded by Sen. Khaniri, that in addition to reading through the Report, giving the governor a chance is to make his case before us, especially at this point where he knows the verdict that the Committee has arrived at, and the conclusions that they made. It will be a good place to start the debate leading to our decision making as a Senate.

This is because what will happen is that he will explain himself. As such as seated as a jury, we will listen to his rebuttal to what the Report accuses him of. Afterwards, each of us will be free to air their findings whether they agree with the Committee Report or with the defence that the governor will have put up here by himself.

Therefore, I support this proposal that let us listen to the governor at this particular point. Later on, we can have a debate having listened to both parties.

Thank you.

The Speaker (Sen. Lusaka): Sen. Murkomen, proceed.

Sen. Murkomen: Mr. Speaker, Sir, thank you. The proposal to bring the governor before our debate is one of those very important innovations that we are putting forward after learning from experience.

Since the governor already knows the verdict of the Committee, coming before us is like an appeal. Therefore, it is better he makes his case first before we can sit, canvass and make a determination.

If I will have made my position known during the debate before the governor speaks, it becomes even a contradiction for me to vote after that, having been convinced by the governor, yet I am on record having taken a particular position.

Mr. Speaker, Sir, whereas this is the first time we are going to do this, I think there is a better way to do it. The governor speaks first then we have an opportunity to consider what would be in my opinion part of his appeal, then apply the same to our debate and the vote.

This has been unique in this governor's trial from the time we started with the committee and the process in which we identified the committee Members. With your permission, this will be a better way of doing it.

The Speaker (Sen. Lusaka): Sen. Wetangula, proceed.

Sen. Wetangula: Mr. Speaker, Sir, thank you. What we are faced with now bears us out that law is indeed dynamic to the extent that every other day you encounter something new. Previously, we normally, like in the Hon. Wambora impeachment, the report is tabled, moved, seconded and debated, then we hear the governor. We retreat into something called in-camera, discuss again then open up and vote publicly. I am persuaded by Sen. Faki and those who have spoken.

Our Constitution says justice shall be dispensed without any due regard to unnecessary technicalities. Given what we have, I know that some lawyers may hold a different view.

However, having listened to the Mover and Seconder, who listened to firsthand evidence and have brought a report, apart from our personal opinions on the Report, none of the Members here is going to advance an accidental argument other than what we have. To that extent then vague as it looks, the proposal by the distinguished Senator for Mombasa County supported by other Senators falls squarely within the ambit of Standing Order No. 75 (4) (b).

“If the Special Committee reports that the particulars of any allegation against the governor have been substantiated, the Senate shall after according the governor an opportunity to be heard, vote on the charges.”

This particular Standing Order does not even seem to anticipate debate although we have been debating and we will make our comments along the way. It might be good in my view to hear the governor and those who have proposed as such, have a point.

A departure as it may be from our previous proceedings but it is not in violation of any Standing Order. It is, in fact, in sync with Standing Order No. 75 (4) (b). I concur that we can call the governor under Article 50 of the Constitution that talks of fair trial.

Mr. Speaker, Sir, I urge you in making your ruling to consider the things we have said, if the Governor is around, we hear him.

(Sen. Cherargei stood in his place)

The Speaker (Hon. Lusaka): Sen. Cherargei, you are all over the House.

Hon. Senators, I have heard you. I will use the discretion of Standing Order No.1 and put a voice question following what Sen. Faki has proposed and was seconded by Sen. Khaniri.

I put the question that the Governor comes now before debate.

(Question, that the Governor be heard before debate on the Impeachment Motion, put and agreed to)

We will have the Governor’s team come. I will give him 30 minutes. Governor’s team, are you ready?

The Governor will be heard through his lawyer. You are welcome.

The Advocate for Wajir County Governor (Mr. Ndegwa Njiru): Mr. Speaker, Sir, hon. Members of the Senate, my name is Ndegwa Njiru. With me is my learned friend, Mr. Mburu. We are here on behalf of the Governor. I spoke to him and when this session began. He was slightly taken ill, but he has recovered and is on his way.

He advised me to seek your indulgence to indulge him for about 15 minutes, so that he can avail himself, for the reason that the Governor who is on trial deserves to be heard. If it so pleases you, we seek your indulgence. You shall allocate time to us, because we intend to give him about five minutes, then we shall do a sum up of our summations. Much obliged.

The Speaker (Hon. Lusaka): That is okay. It is granted - 15 minutes.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Sen. Murkomen, what is your point of order, so that I make a decision?

Sen. Murkomen: Thank you, Mr. Speaker, Sir. Considering the request that came from the Governor's lawyer, in this very difficult time, it is not surprising to find anybody falling ill. It is possible. However, we should find the right Standing Order for us to adjourn for a certain period of time. Is it not in order for either the Senate Majority Leader or Senate Minority Leader to move a Motion for adjournment? Is it purely at the discretion of the Speaker?

The Speaker (Hon. Lusaka): Yes.

Sen. Murkomen: I thought that the leadership should---

The Speaker (Hon. Lusaka): Sen. Murkomen, I will use Standing Order No.1 and suspend the House for 15 minutes, so that we come back at 5.45 p.m.

(The House adjourned temporarily at 5.26 p.m.)

(The House resumed at 6.00 p.m.)

FINAL ADDRESS TO THE HOUSE BY GOV. MOHAMMED
ABDI MOHAMUD AND HIS LEGAL TEAM

The Speaker (Hon. Lusaka): Your Excellency, the Governor of Wajir County, welcome to the Senate. I am giving you an opportunity to speak. The Senate received the Report and we have agreed that before they debate the Motion, we first give you an opportunity to say something. You may share your time. I have given you an initial 30 minutes. Thereafter, you may take your leave or stay. That is at your discretion.

The Advocate for Wajir County Governor (Mr. Ndegwa Njiru): Thank you, Mr. Speaker, Sir. We are highly humbled and honoured by the opportunity that you have extended to us, and the latitude of even adjourning the House for purposes of facilitating the appearance of the Governor.

Mr. Speaker, Sir, the Governor is here. He will briefly address you on the issue at hand and specifically, the question of the status of health in Wajir County and what his

regime has achieved over a period. Note that the Governor has only had a one year of consistent administration, noting that he only cleared his election Petition in the Supreme Court in 2019. So, factors constant, the Governor will address you and offer you the achievement of his administration of within one year.

Mr. Governor, Sir.

The Speaker (Hon. Lusaka): Okay. Welcome.

The Governor of Wajir County (Hon. (Amb.) Mohamud): Thank you, Mr. Speaker, Sir, and the whole House for giving me this opportunity to defend myself against this impeachment, which was largely political.

First, I apologise for coming late. I was unwell and thought my lawyer would represent me, but I had to come. Secondly, impeachment is in the Constitution and our laws. However, in my opinion, the impeachment before the House does not meet the threshold to say that it is a gross violation of the Constitution. In my opinion, what the Committee has said is that health is an impeachable issue. It may be impeachable, but it cannot amount to gross violation of the Constitution. I say this because we have done a lot in the County.

Since I became the Governor of Wajir County, a lot has been done besides health. I will come to health later. Other areas where we performed satisfactorily include bringing peace and instability in the County. As you are aware, areas in the north have always had tribal clashes due to competition for water and pasture. Clans have been fighting before I came in. For five years, many people lost their lives.

Although it is not the duty of the county government to maintain peace and order, we have to work with the national Government to ensure peace in the area. We did that because we cannot provide services to wananchi who are fighting. In the end, we were successful. For the last four years, we have not had a single incident of clan clashes.

The other issue common in our areas is clannism and negotiated democracy. When forming the government at the national level, it is usually a Government of national unity. Even at the level, we must have a government of county unity. I am saying that because in the county; there are clans and majority and minority groups and so on. All these people have to be accommodated in the government. In my government, all these people, whether disabled, minority, majority or any other sector of the society are effectively represented.

On the issue of development, generally it is across board. All the 30 wards I have receive Kshs25 million per year. That is a total of Kshs750 million, which is equal and not equitable. They are receiving equal amount of money for small projects like water, educational, health facilities projects, *et cetera*. These are small projects that cost Kshs4 million or 5 million.

Mr. Speaker, Sir, bigger projects are also equitably distributed and residents of Wajir County can attest to this. Every year, we spend Kshs750 million. If you divide this amount by 30 wards, you find that Kshs25 million goes to every ward, irrespective of whether or not they voted the governor. That is equal opportunity to everybody. For

bigger projects worth more than Kshs5 million, like dams, those are equitably distributed depending on where the problems are.

My officers have given adequate information regarding the status of health in Wajir County. It is very unfortunate that one of the issues that have been picked is the absence of electricity or a generator for that matter that was supposed to provide power to our oxygen plant, which resulted in us getting oxygen from the neighbouring County of Mandera and Nairobi.

The main reason is that Wajir Town depends on generators because we are not on the national grid. For power, we depend on generators driven by diesel. Just imagine if a generator is on throughout the day and night, then there are many breakdowns.

We have a problem with power and power supply to hospitals and as a result, we could not power that oxygen plant. However, we have already purchased a big generator, which is about 500 kilovolt-ampere (kVA) that is able to provide power not only to the oxygen plant but also power to the whole hospital.

The other thing that we have done since I became the Governor of Wajir is that there were many other services that we have provided. We have built over 50 health facilities, dispensaries and other small health facilities countywide. That means a lot of money has been spent on that. This is nearly in all the wards we have. At least, every ward has one dispensary or more.

We also bought some ambulances. Right now, as we talk, we have 16 ambulances that are operational. We repaired the old ones. We purchased three, were given two by the National Government and one by the Intergovernmental Authority on Development (IGAD).

Mr. Speaker, Sir, in a diagnostic survey that was carried out by the national Government, Wajir County was given 89 per cent for diagnosis of diseases, while some of the other counties were much below 10 per cent. We were rated among the best. In fact, we were number two in Kenya as far as diagnosis of diseases is concerned. Garissa was number one followed by Wajir. This was done in the last two years.

The availability of priority drugs by Wajir County Government was number 13 out of the 47 counties with 59 per cent. Despite being very far away from Nairobi, with poor communication and the county being vast, we were able to be number 13 with 59 per cent. On availability of vaccines by facility types across the county, we were number four with 81.8 per cent. The other one is availability of equipment in hospitals. We were number 20 with 50 per cent.

Mr. Speaker, Sir, as I said earlier, the main impeachment is said to be gross violation of the Constitution by not providing adequate health facilities. According to me and my county, we have provided enough.

Mr. Speaker, Sir, we have a lot of challenges. You should understand the challenges facing those counties that are very far away. Despite all these challenges, we were able to make this progress and others that we cannot mention here because of time.

I wish to plead with the Senate to be sympathetic and not impeach me because of one aspect. We can say that I could be impeached for violation of the Constitution, but it

cannot be gross misconduct. We would like the Senate to look into this matter very carefully, be humane and give us a chance, so that we are able to serve the people of Wajir.

Mr. Speaker, Sir, with those many remarks, thank you very much. May God bless you.

The Speaker (Hon. Lusaka): Counsel, do you want to add? Do you want to use the remaining time?

The Advocate for Wajir County Governor (Mr. Ndegwa Njiru): Yes. We still have some reserved time and I would want to share with my learned friend, Mr. Mburu, then I can do the sum up.

The Speaker (Hon. Lusaka): Okay.

The Advocate for Wajir County Governor (Mr. Mburu): Thank you, Mr. Speaker, Sir. In defence of the Governor, we do wish to make the following observations in respect to the Report that you are going to debate this evening.

An impeachment process is a process that should be guided by the rule of law and should echo the sentiments of both the political and legal aspirations of the citizens of the county, which the governor to be impeached hails from, and this being the Senate, the aspirations of Kenyans.

Therefore, it is prudent when interrogating the Report that is before you to ensure the threshold of impeaching the Governor has been met, and the threshold is not a new phenomenon. It is a phenomenon that has been before this House, and this House being a House of precedence, has deliberated and set out in detail what the threshold of impeachment should be.

Therefore, the main allegation against the Governor is to be found from paragraph 185 to 188 of the Report that is before this House this evening. The report alleges that there were incidences where a citizen was denied the services of an ambulance and the other incidence that has been captured therein is in respect to the death of a senior county official due to unavailability of oxygen.

However, as the Chairman was tabling the report, he did admit that no witness was called to prove the said allegation. Therefore, in the event that that allegation has not been proved or the allegation therein has not been proved, then the threshold of impeachment based on the ground of failure of the health sector in Wajir County should not be held to stand.

Therefore, it is an impeachment that should not solely be based on a flimsy ground, where evidence has not been tendered and an admission to the same has been done. Therefore, we urge this House that in considering the Report, to look at the tenets of Article 50 on impartiality and look at the issues before it without favouring any party, and find that in the event that the evidence in respect to a charge has not been proved, then the House ought not to be persuaded to support that charge.

Mr. Speaker, Sir, lastly, I wish to highlight a very important issue from the Report that deals with the issue of health *vis-a-vis* previous impeachments that have been before this House. In particular, the issue of health was a common phenomenon in the

impeachment in Kirinyaga County. A doctor in that report highlighted how the health sector has invariably broken down in the said county.

However, the finding was different from what we have today. Article 27 of the Constitution provides that any citizen has the right to equal benefit and protection of the law. There should be no preferential treatment in respect to matters that are similar.

With those few remarks, I would urge this House this evening not to be persuaded by this Report, and not find that the allegations against the governor have been substantiated.

Thank you.

The Advocate for Wajir County Governor (Mr. Ndegwa Njiru): Mr. Speaker, Sir, we will be very brief in utilizing the time that is remaining simply because this House is this evening called upon to relook as to whether they shall have a Pontius Pilate moment, where the innocent is crucified and the guilty are set free. The Pontius Pilate moment is not unique to our provisions of law.

Mr. Speaker, Sir, it is largely said in the common law principles that it is better to release 100 convicts other than have one innocent person convicted. That innocent person is before you this evening.

Hon. Members, a Pontius Pilate moment is before you in the sense that within all the other allegations, some of the grievous allegations touching on the utilization of the finances and the resources of this country, the governor has been set free. That shows that the governor does not have itchy fingers. That shows that the governor has never had his hands in the cookie jar.

Mr. Speaker, Sir, it is phenomenon for persons serving in public services, most importantly in the position of the governor to find themselves having crisscrossed with public finances. Even as we look at the fate of the governor this evening, the governor has been acquitted of all those charges. What remains is to interrogate whether what has been presented before this House meets the threshold.

The thing that remains to be interrogated, as my learned friend has indicated, is whether this House shall be guided by the principle of its doctrines and the doctrines of precedence that has been set previously. It remains to be found whether the governor before you, who pleads for your mercy, will have an equal treatment of the law.

Mr. Speaker, Sir, it is calling for a moment of equality of arms. It is calling for a moment where Article 27 ought to be put into consideration. It is giving a comparative study of the impeachments that have been brought before you and this House, with the recent one where there was an acquittal of Gov. Waiguru. The County Assembly brought three witnesses all of whom were medical doctors, the star witness being Dr. Gor Goody.

They gave a clear analysis of how the health system had broken down in Kirinyaga County. Most importantly, the question of Kirinyaga County was not something that happened in camera. It happened in glare of the camera instead. You recall that there was applause and outcries. The hospital was in a pathetic situation. The doctors testified, but this House returned a verdict of 'not guilty.'

Mr. Speaker, Sir, there is no evidence that was tabled. There was no doctor who was called by the County Assembly. The only person who testified and when put to test through cross-examination was a Member of County Assembly (MCA); one single MCA alleging that the Members of Wajir County are forced to fuel their ambulances. When called to task to provide evidence when the ambulance was fueled, who fueled, why it was fueled, who paid, how it was paid with the receipt for the payments, he could not tender evidence. He only said the governor is liable. Why was the governor liable? The allegation was that the buck stops at him.

Mr. Speaker, Sir, hence therefore, the fundamental question is: shall a father be bearing the sins or shall we carry the sins of our sons? Shall we be held vicariously liable for all things that happen in our own homes? If my child breaks my neighbour's door, should I be held liable? If my Ndegwa Junior breaks or hits my neighbour's child, should I be held liable?

It is time for everybody to carry his cross. The cross that the governor is carrying this evening does not belong to him. There is nobody who has been surcharged for those issues. Why should there be a different finding?

Mr. Speaker, Sir, the fundamental question as I sum up, I can see the light is coming up, in Gov. Chepkwony's case that this House held that it is not every allegation that should amount to the draconian action of impeaching the governor.

For one reason, impeachments have the ability of disorganizing Government. We only have about 10 months to go. Why should we disorganize Wajir County? This man before you was in court all the way from 2017 to 2018 struggling with an election petition. That means he has only consistently been able to serve for one year. When 2020 came, COVID-19 came. Here he is, being convicted for COVID-19.

Mr. Speaker, Sir, we all know that even today, the Ministry of Health has announced various unfortunate deaths of our dear ones. Who should carry the cross for those deaths? What about in the subcontinent of India where people are dying in thousands because of COVID-19? Should Prime Minister, hon. Modi carry the cross? These are some of the pathetic situations that COVID-19 has put us in.

We are here to plead for your mercy. Wajir County is 55,000 Square Kilometers with over 200 hospitals. The County of Nairobi is 669 Square Kilometers with equal number of hospitals. Does this man not deserve credit? Look at the County of Kirinyaga, 1,149 square kilometers with about 50 hospitals. Does this man not deserve your mercy? Has he not done enough? Does he deserve to be impeached?

Mr. Speaker, Sir, we appeal to this Honourable House to have mercy on this man. He has been in public service for over a quarter of a century. He has diligently served his country. Is it only so hard to have him and to plead with you to have him finish the 10 months? The people of Wajir will be granted an opportunity to evaluate him through the power of the votes.

This Assembly is being called upon to protect devolution. Protecting devolution also means protecting governors from such kind of attacks through frivolous means. That

means that the governor is also under your protection and mercy; that you protect devolution from infiltrations by people who have anterior motives.

He has indicated to you about the dynamic and the demographic distribution of the people of Wajir where clannism is so fundamental in the manner in which county governments are constituted and how they are running. Could it be that clannism of Wajir and the entire Somali and North Eastern counties is at play? Would this Assembly be invited to look at that from that perspective? If it is in play, should this assembly be involved in fighting someone's battles?

Mr. Speaker, Sir, we plead for your mercy. As you operationalize Article 96 read together with Article 174 of the Constitution, kindly, look at the question of protecting devolution. Protecting devolution means that there should be perpetuity and continuity of governance. There should be perpetuity of government. Was there evidence tabled to show that this man is guilty? We urge you to find this man innocent.

We have the Simpson situation. If the glove does not fit, acquit. The glove that has been shown of his work and diligent deliverance in the health sector fits that he continues. The allegations do not square out with the man before you. We urge you to consider our mitigations, our facts and acquit this innocent man.

Much obliged.

The Speaker (Hon. Lusaka): Thank you so much, Hon. Governor and Counsel. The Floor is now open to the Senators to contribute to the Motion.

(Resumption of Debate on the Impeachment Motion)

Sen. M. Kajwang': Mr. Speaker, Sir, you probably might need to give us guidance on how long we have to contribute because I know there will be a lot of interest from Members and time is ticking. This will also help me to organise my presentation.

The Speaker (Hon. Lusaka): The gazettelement goes up to midnight.

Sen. M. Kajwang': Do we have the usual 20 minutes because this is a Motion?

The Speaker (Hon. Lusaka): Yes, you have the 20 minutes.

Sen. M. Kajwang': Thank you, Mr. Speaker, Sir. I intend to take less than that. Having listened to the Governor and his team and read the Report of the Committee, I am still trying to form my thoughts about what has been brought to this House. When this House voted to try this matter through a Committee, we gave the team of 11 men and women, who were not imposed on us, but chosen by our respective coalitions.

You do recall that unlike in the past where the Motion for a Committee was brought by the leadership, having gone through Senate Business Committee (SBC), this time round the House voted to go for a Committee. It is only upon the resolution of the House to go for a Committee that the Committee was constituted. It means that this House have full confidence in the 11 men and women who went to test this matter and have brought a report to the House today.

What is the verdict of the Committee? The Committee is unanimous. I have rarely seen a Report signed by all Members of a Committee. Even in the Report of the Justice,

Legal affairs and Human Rights Committee on the Building Bridges Initiative there were a few abstentions. Hon. Junet Mohamed, Hon. Opondo Kaluma and a few others did not sign. However, in this case, all the 11 Members of this Committee signed the Report. When you establish a Committee to investigate the allegations and give them resources, time and the best legal advice, and they come back and tell us that allegations are substantiated, we need to take it seriously.

However, this Committee has brought to us what I would call a poisoned chalice. When you want to kill a cow, you go for the jugular. You do not cut the leg hoping that by cutting the leg it will bleed to death. There were 17 allegations and two charges. Out of the 17 allegations one is substantiated and the others are not. This is cutting the leg of a cow for it to bleed to death. It is not going for the jugular. What we have seen in counties, and our collective experience with county governments, is that there is so much graft in county government's procurement departments. I must congratulate the County Assembly because they took the bold action of deciding this matter at their local level and bringing it to the Senate. I encourage County Assemblies across the nation that there is no Governor who is above the law. There is no governor who cannot be impeached or brought to the Senate.

The County Assembly had charges relating to procurement and the Committee found them unsubstantiated. There were allegations relating to corruption and were found unsubstantiated. There were some very interesting allegations relating to the office of the first lady, which is a stranger in law. When you go to all these county governments, you will find people going by the names of 'first lady'. That is absolute hogwash. I do not see anywhere in the County Governments Act or any of the relevant pieces of statute where you have someone called a first lady to be utilising county resources and blackmailing and intimidating officers in county governments.

I like the way the Chair of the Committee said it; that you cannot stop a Governor from being romantic and intimate with the wife. Be romantic and intimate in your bedroom and house, but not within the precincts of the county government, where you are the Chief Executive Officer.

The reason I say that we are trying to bleed the cow to death by cutting its leg is because the focus of the charges or allegations have been on the health sector. Nothing is more important than the health sector to county governments because this is one of the most important functions, leave alone roads. If you build roads and your people are dying, then you are doing nonsense. You are not doing anything of value to your people. If we focus properly on the health sector, 47 governors plus one President would be impeached today. If there is someone who has failed to deliver health services to the people of the Republic of Kenya in the midst of the COVID-19 pandemic - and we have reports from the Health Committee - it is the Head of State and his bureaucrats.

If you look at our respective counties, every county--- Right now, the Committee on Health Committee is looking at COVID-19 expenditure for each of the 47 county governments. There is no single county government that has justified its expenditure of

COVID-19 funds. It is this House that looked at the Managed Equipment Scheme and failed to get a resolution on the scheme.

Today, we have said that this Governor should go home, and so far, we have the Report of the Committee. This is a default position that the Governor should go home because the renal units supplied to him through an opaque process called the Managed Equipment Scheme were not working. How many counties have failed to use their renal and dialysis units? Their Intensive Care Units (ICUs) are not working for reasons as small as electricity and the poor quality of water. I visited Samburu County and found the Managed Equipment Scheme equipment were all kept in boxes because they do not have a reliable supply of water in those health facilities. This House failed to come to a resolution. We did come to a resolution because the Committee on Health told us that the Managed Equipment Scheme was a fraud, but the House did not confirm that report by the Health Committee.

The Governor has failed to put in place the renal units and for this, he has compromised the health of the people of Wajir. A health worker died because of lack of oxygen. This is gross negligence which extends to 47 county governments. The lack of oxygen is gross negligence. However, the gross negligence extends to all the 47 county governments. In my own county, Homa Bay County Government, we lost a young nurse who worked at the Karachuonyo Sub-County Hospital. She died because of COVID-19 related complications.

If the MCAs of Homa Bay County are watching this proceeding, I would like to remind them that if the Governor of Wajir County can be impeached because a health worker due to lack of oxygen, I encourage them to impeach my governor because a health worker also died in Homa Bay County because she was not provided with appropriate care.

Mr. Speaker, Sir, we have read in the report that the Wajir County Government has allocated 22 per cent to the health sector. If we did a study on allocations of funds by counties to the health sector, the Wajir County Government could rank among the best. Having sat in the County Public Accounts and Investment Committee (CPAIC), I have never seen such a high percentage of county allocation to the health function. An allocation of 22 per cent to health is no mean task. Many county governments are allocating 22 per cent in total to development because most of their monies go into salaries and operations. If the allocation of 22 per cent to the health function is true as contained in the report, I think that the Wajir County Government has done a good job by allocating such a huge percentage to healthcare.

We have seen the Kenya Integrated Health System and Data that highlighted the outcomes of the prenatal and antenatal visits, the outcome on immunization and other indicators of success in the health sector. However, the Governor has not paid workers in the health sector. Strikes are the order of the day. Whenever strikes are the order of the day, it means that the residents of Wajir County cannot get the services that they desire. For all the 47 counties where health workers consistently strike like in Homa Bay, Kisumu and many other counties, I urge them to impeach their governors because we are

impeaching the Governor of Wajir County because his health workers are going on strike. If this House establishes that is impeachable, Then I would like to see the other 46 county governors coming to this House to be impeached if we are using the same standard.

Mr. Speaker, Sir, I read in the report that out of the 50 doctors employed in Wajir County, 20 of them are away on study leave. We, Members of Parliament, receive calls from health workers every other day asking us to intervene for them to be allowed to go on study leave in cases where they have received scholarships. The other day, I dealt with a case where a young doctor got a scholarship to go to Muimbini in Tanzania to study oncology considering the menace the cancer is in this country and knowing how short we are of qualified oncologists in our county governments, the CECM health and other people in the Homa Bay County Government refused to give her an opportunity to go and study because they thought that they have to deal with issues of malaria and other communicable disease rather than oncology issues.

Even if we impeach the Governor of Wajir County today, we must hail him for ensuring that his doctors are receiving training. Having 20 out of 50 doctors away of training is impressive. I hope that the doctors who are away on training are on full scholarships and that did not just acquire those opportunities on their own. That tells a story of a county government which out of its many bad policies, has at least one good policy on the development of its staff.

Mr. Speaker, Sir, the CEO of the county is the Governor. The person responsible for health services is the CECM and the chief officer for health. The decision that we are going to make today will set a precedent. A few of us here were governors before they came to this House. We insist that if a spoon disappears in the stores, the Governor must tell us why the spoon disappeared from the store because he is the CEO so the buck stops there. What I have seen in many counties is that when the health sector is messed up, they first deal with the CECM in charge of health. I do not know whether the MCAs of Wajir County dealt with the CECM and chief officer in charge of health before proceeding to the Governor.

However, the Governor cannot run away because he is the CEO of the county. I would like to see a situation where the Governor is being impeached at the Senate while the CECM in charge of health also takes responsibility for his or her inefficiency, incapacity and failure to provide health services to the people of Wajir County. I would like to use this opportunity to educate our MCAs, not just the ones from Home Bay County, but from all the 47 counties. The health function is such an important devolved function. When the health function is suffering, they should not run around dealing with small fish 'omena'. They should go for the big fish as it has been demonstrated by Wajir County Assembly.

When the CEO of the county wakes up in the morning, he must know what is going on in the health sector. I travelled back from Homa Bay County this morning. I visited the referral hospital in Homa Bay County over the weekend and was shocked to learn that there are no toilets for outpatient visitors there. I wondered what would happen if there was ever an outbreak of Cholera or other diseases that are spread through human

waste. The Homa Bay County Assembly impeached the CECM in charge of health, Prof. Muga. After impeaching him, the County Assembly of Homa Bay told the Governor to take over the health docket.

If the Governor of Homa Bay County has failed in the supervision of his CECM in charge of health by failing to push him to ensure that there is quality in that department, how else are you going to tell the Governor to take over that function if he has already abdicated his duty in the first place? If or when we impeach the Governor of Wajir County because the special Committee has told us that one out of the 17 allegations has been substantiated. Our rules state that if one allegation is substantiated, the Governor is guilty. Those are not the inventions of the 11-member Committee that was looking into the matter. If one allegation is substantiated and we confirm it, then the Governor goes home.

The issue of insecurity cuts across not only the health sector, but the education sector as well. Whenever our brothers and sisters are posted to frontier counties, they clamour to get transfers out of such areas. Are we building a nation where an Otieno cannot teach in Wajir County or where an Abdullahi can never teach in Migori County? Are we building a system where a Wafula can never teach in Garissa County? We must look at the big picture and how insecurity has impacted on certain professions such as doctors, nurses, teachers and other profession that cannot be developed internally.

Is it an impeachable offence that doctors and health workers are running away from frontier counties because of insecurity? If we impeach the Governor of Wajir County, we should impeach the President because he is the one responsible for providing and guaranteeing the security of all professionals in this Republic.

Mr. Speaker, Sir, looking at the numbers, you will see that 41 per cent of the 118,000 voters in Wajir County had confidence in Gov. (Amb.) Mohamud. I sometimes advocate for people to enjoy or suffer the consequences of their bad decisions. If 41 per cent of the voters made a bad decision, they should be allowed to enjoy the consequences of their bad decision of electing Gov. (Amb.) Mohamud. We should allow them to have the pleasure or pain of Gov. (Amb.) Mohamud's leadership. However, it is our duty as Parliament to relieve the 59 per cent of voters who did not support Gov. (Amb.) Mohamud of the suffering of the tyranny of the 41 per cent that supported him.

The special Committee has advised us accordingly and unanimously. It has decided that to kill this cow, we do not cut the neck, but the legs for it to die bleeding. A cow without one leg can still walk. Ultimately, it will be up to the 47 delegations to make a decision. However, the county assemblies are watching. If we impeach the Governor of Wajir County today, I urge them to bring all their governors for impeachment because they have all failed pathetically in the provision of health services to our citizens.

Mr. Speaker, Sir, I thank you.

The Speaker (Hon. Lusaka): Proceed, Sen. (Dr.) Langat.

Sen. (Dr.) Langat: Mr. Speaker, Sir, I thank you for giving me this opportunity to make my observation. First of all, I would like to note that this is a very important

process. The people Wajir County are expecting this House to determine what will happen to them in the next 14 months before elections.

These are very few months that we can let anything go that way. Even one week or a day for a dangerous person means a lot to the lives of the people of this country.

It is so important that we must consider every allegation that has been brought to this House very keenly so that judgment may satisfy the needs and wishes of the people of Wajir. I have read the charges brought before us. The first one is on gross violation of the Constitution of Kenya 2010, County Government Act 2012 and Public Procurement and Disposal Act. This is a very serious violation. We are seeing all these happening in all our counties. As Sen. Wetangula said, in every five years, this country goes on an exercise to elect very humble 47 governors. However, after five years, they become millionaires and billionaires.

After reading these allegations, I felt for the people of Wajir County. We must also be very careful so that people outside there may not make this House a lynching ground. As I said, we must be very keen on every allegation brought to us.

The first allegation is failure to account for the financial resources allocated to the county. I am in Senate Committee on County Public accounts and Investments (CPAIC). One of the greatest challenges we are facing is that many governors are not willing to come and account for the resources we have been giving them. Some of them give flimsy excuses that do not hold any water. They fail appear the last minute rendering the Senate Committee to become almost useless. We were in Kisii waiting for some governors who never appeared.

The failure to account for the public resources is a gross violation of the Constitution because it hampers the process of oversight. When I read the observation by the Committee that it finds that allegation was unsubstantiated, I thought the trap I had laid went scot free. The next one is lack of accountability in the management of the county resources. Again, the Committee again finds that the allegation unsubstantiated.

I was looking forward to the next one which is violation of Article 176(1) and 195 of the Constitution. To me, I usually understand very well that when one is building a very strong conclusion, the premises must logically involve the process. When I observe “not substantiated, no evidence” I feel we need to advise our partners in the county assemblies that allegations levelled against a governor must meet threshold for it impeachment.

The issue of delay in payment of pending bills cuts across all the counties. Many governors have been accusing the national Government of not releasing monies to the counties on time. Part of the failures we are experiencing today in our counties emanate from the National Treasury for delaying disbursement to counties. This explains why we have stalled and white elephant projects in our counties. As a result, contractors become frustrated because banks demand of them to pay the loans they had taken do some of these projects. This is an issue we need to seriously address in this House and make sure counties get their resources on time.

The issues of provision of health services cut across counties. The other day, I went to Longisa referral hospital in my county. I was surprised to see patients sharing beds during this time of COVID-19 pandemic. The whole of last week, patients were complaining for lack of water in that hospital. As Sen. M Kajwang' said, if this the trend then we must call upon all our MCAs to impeach all governors if this will offer be a permanent solution to problems facing our health sector in this country.

The other allegation levelled against governor is failure to establish the Country Budget and Economic Forum. That is a very serious allegation. However, the observation of the Committee is that the Governor had taken steps towards establishing it. Therefore, the allegation was not substantiated. The allegations are so attractive in the very beginning, but when on gets deeply into the Committee's observations, there is no evidence and not substantiated.

There is also an allegation about failure to establish an audit Committee which cuts across all the counties. If one checks the audit reports we have been given all the time, these are always the allegations. The Committee found that the allegation was not proved.

When see out of 15 almost 14 allegations are not substantiated, I tend to think something must be done by out county assemblies to make sure that allegations leveled against governors meets threshold for impeachment. They must be convincing even to the people outside there that something surely is in the Senate.

Mr. Speaker, Sir, the second charge was abuse of office. This issue also cuts across most of the counties. Governors have established First ladies' offices where a lot of money is allocated to them. They go round the offices harassing people. These are things which are not in the Constitution. I was expecting in these charges to see a robust accusation with evidence to impeach the Governor.

Mr. Speaker, Sir, in violation of Article 73 (2), the Committee finds the allegation was not proven and was, therefore, unsubstantiated. That is the poetry or song that is moving from one allegation to the other. I do not want to belabour so much of this debate. However, in future, when such impeachment happens, I urge our MCAs to make sure that they look for evidence that is strong enough to give to this House that charisma and courage to go through and come out with proper impeachment with substantial information.

I am still reading so that I may make a proper conclusion on this when it comes to voting. Otherwise, as of now, I ask MCAs to be very serious when it comes to impeachment matters. They are expensive to our counties. I urge them to do thorough oversight activities in their counties so that they may support us. This is because most of times, we are here in the Senate.

Mr. Speaker, Sir, it is unfortunate that whenever you hear most of the counties we have gone, you hear the people, society and the public saying that most of the MCAs have gone to bed with their county governors. They are unable to do the oversight. The whole county is always expecting us to arrive there on Saturday and Sunday to go round and see the projects.

I encourage the MCAs to support this Senate in monitoring those projects that are being initiated. They should evaluate them from inception and inform members of public their progress.

Mr. Speaker, Sir, the county assemblies are very important to us. We encourage them all the time not to go to bed with their governors, but make sure they do thorough oversight whenever we are not there. This is so that they give this important House a good report that will enable us make thorough and informative decisions.

The Speaker (Hon. Lusaka): Sen. Cheruiyot, proceed.

Sen. Cheruiyot: Mr. Speaker, Sir, I thank you for this chance. This is a very interesting scenario. We are reading through the report and listening to the petitions from the warring parties from Wajir County; that is, the County Assembly and the Executive led by the Governor.

I have had opportunity to read through largely the report that has been brought by the Members of the select Committee that we approved. First of all, we must appreciate the difference in terms of the thoroughness of the work that has been done by this Committee and sometimes when we choose to conduct impeachment trials by Plenary. I must commend the Committee for a job well done. If you read through the report, you get a sense of the intrigues of the challenges that bedeviled the County of Wajir under the leadership of the Governor that is before this House.

Mr. Speaker, Sir, it is proper that as a House of the Senate, we look back to the journey that we have travelled as a nation before setting up of the systems of devolution and the clamour for it. In that in the previous elections before the 2013 General Elections, devolution was a big electoral question. It split the country into half with the centralists versus those who believed in the dispersion of resources from the centre.

With the arrival of devolution, the fortunate thing that you will notice is that there is a unanimous agreement across the country wherever you move in this Republic that it was the right thing to do. However, we must guard that gain so jealously bearing in mind that many of the citizens of this country at this point and time are disillusioned with the promise of devolution eight years down the line.

Mr. Speaker, Sir, this is because you could remove the name of Wajir County from this Report and insert any other county of the 47 and you will find all of these issues that are being raised by the County Assembly to be true if not worse of the state of devolution in our various county governments. Therefore, the question that we face this evening as the Senate is: What do we do with the case that has been brought before us?

I do not agree with my colleague Sen. M. Kajwang' who says that finding the Governor guilty on one of the 17 charges is a kin to cutting the leg of a cow and leaving it to bleed to death and believing that that is justifiable punishment. I want to believe that there is a preponderance of evidence that has been brought before us, even as you lead up to that one particular charge, that points to a county government that is not well run to a county government where the executive treats the people with contempt.

Mr. Speaker, Sir, we have been given the evidence that despite the fact that the law may not be so specific on how, for example, the timeline with which a County

Budget Economic Forum (CBEF) should be established by a county governor, a good governor and somebody who cares about the interest of the people that voted him into office should be diligent enough to have established such a forum.

Unless the governor before us does not understand what is the importance of a CBEF. It is about devolution. This is the avenue where the citizens of a county gather and say these are our key economic priorities. Unfortunately, many county governments have not established this forum, and the fault perhaps fall on many of us especially those of us who serve in the Committee on Finance and Budget.

This is not the first impeachment report that is recommending to the Senate that we need to stipulate the timeliness. However, as a county governor popularly elected, that you moved around, set out a vision, shared with the people of a particular county what you intend to do for them, you want to tell me with a few months to run in office, if up to this point you have not formed the platform upon which people can evaluate your economic policies and see if it makes sense to them---

(Loud consultations)

Mr. Speaker, Sir, I beg for your protection because there is loud consultations to my right.

The Speaker (Hon. Lusaka): Yes, there is. Hon. Senators, consult in low tones.

Sen. Cheruiyot: Mr. Speaker, Sir, it is destructing my flow of thought. Thank you.

On the second allegation, there is a very interesting chain of trends that is being set out here. When you read the Report, you do realize that the County Assembly perhaps has prosecuted a very important point.

For example, they established the failure to draft a mid-term strategy for a particular financial year. The governor was supposed to have delivered and shared the same with the County Assembly.

Mr. Speaker, Sir, it will be impossible to guarantee such a charge and pass it as having been validly brought before the County Assembly. However, the truth of the matter is that the County Assembly has laid a basis and given us a sneak peek of what is going on and the attitude of the person that is in charge of this county.

I move on to the charge that this Committee has found the governor culpable. Like colleague Senators who have spoken before me, perhaps this is our opportunity to send a message across the entire Republic. I do not know of any Senator who would agree with the way any of our 47 governors are running the health docket, especially now that we are faced with a pandemic.

Mr. Speaker, Sir, two months ago, I sent a Petition to the County Assembly and County Executive in my own county of Kericho. I reminded them that amidst a pandemic, we cannot be channeling more resources to key infrastructural projects because we know of the promise that it gives in terms of kickbacks, as opposed to strengthening the health department in our various county governments. The governor

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does not pay key interest on the health docket, the most important docket if you ask me. It varies from county to county, but around 80-cent of the people who vote for us to come to this House cannot afford health services from the private hospitals. Therefore, the difference between life and death for 80 per cent of the citizens of our various county governments depends on the soundness of the health docket in that county.

If they have functional health facilities, they will live a long and prosperous life. If it is as sick as what has been painted before us, then many of the citizens will just die. In this case, the County Assembly convinced the Committee that things are not good in regards to how the health docket has been managed in Wajir County. They plead with us as a House with regard to the report that has been brought before us; that this is an impeachable offence.

Mr. Speaker, Sir, I agree with them. We need to send a clear message that governors need to take their oath of office and the resources that are being channeled to them seriously. They should manage them in a way that Kenyans can believe that in 2010, it was the right decision to move the country from managing our resources centrally to devolving them to our various county governments.

If the Senate does not act in another 10 to 20 years, such instances are the things that will cause clamours across the nation. People will say to hell with devolution and that we should go back to the days where our health facilities were managed by the Ministry of Health. I am a strong pro-devolutionist. So as to avert such a crisis, I agree with the findings of this Committee. Any offense that is found to---

(Sen. Murkomen spoke off record)

Mr. Speaker, Sir, there are still a lot of interruptions. If you can move Sen. Murkomen, the avocado farmer sitting next to me---

The Speaker (Hon. Lusaka): I thought you were buddies.

Sen. Cheruiyot: First of all, he is not properly dressed for the Chamber. He is in corduroy jeans. I am not sure that that fits.

The Speaker (Hon. Lusaka): That is okay, Sen. Cheruiyot.

Sen. Cheruiyot: Mr. Speaker, Sir, let me go back to my train of thought. He keeps on interjecting me. He is a lawyer. So, I do not know whether he is extending legal services inside the Chamber.

Before I was interrupted, I said even if there were 99 allegations, so long as the general mood and thinking in the Committee points to a serious case of maladministration in the finance department and health docket, that is enough ground for impeachment. We previously found that with another governor.

I do not understand this obsession with Africans. As a lawmaker, sometimes I struggle to understand this. For an African to do a right thing, you have to specify to him as if it is medical prescription. A county governor does not know that at least once a year, he needs to go back to the County Assembly and give a progress report. The governors in

this country want us to prescribe the County Government Act and tell them that it is a must for them to go.

Mr. Speaker, Sir, common decency demands that since you cannot meet all the residents of your county, you should at least have the decency to appear before their representatives; the county assembly, and give them a progress report of the things that you are doing. However, since we have not specified it in law, I see it appear so many times when we handle impeachments. I was in the Committee for the impeachment trial for Gov. Granton Samboja of Taita Taveta. This charge was also there. At that time, the gentleman had never set foot in the County Assembly.

This kind of attitude is what is making citizens give up on devolution. Therefore, we cannot excuse him. This continues to compound the thinking of many of my colleagues. I plead with you that we agree with the findings of this Committee, so that it teaches a lesson. If you were a fan of one of the drama series back in the day known as *Vioja Mahakamani* - I forget her name - the judge would issue a verdict and say, so that becomes a lesson to you and others who think and behave like you---

(Sen. Wetangula spoke off record)

Sen. Wetangula helped me to capture it better.

Let this be an example to governors who do not step in their county assemblies, and those who are running the health dockets of their counties the way it is being handled in Wajir. This is our opportunity as a Senate not to punish the good gentleman or disagree with the findings of the Report, but to lay a basis. This is so that Kenyans can see how the Senate of the Republic of Kenya treats and considers such matters when they are brought before us.

Mr. Speaker, Sir, there is another very interesting finding. This issue has been a general topic of debate, but it does not feature much in the concluding pages of the report. If you read through the pages, you will find a very mysterious character, the office of the First Lady, which is a stranger in Statute.

Like I have said, this is not a problem that is unique to Wajir County. I know of many county governments where this is increasingly becoming a challenge. Members of the cabinet of the various counties even have to give reports. If they are not in favourable finding with the holders of that illegal office, then they know for a fact that they might be out of a job very soon.

The Senate needs to set itself strong on this particular issue. We need to interrogate county budgets. I know that in certain counties, those illegal offices even have a budget. Some of those budgets are more endowed than the budget of certain key offices within the county. Therefore, granted this opportunity, this is our chance to set the record straight on whether the Senate condones some of these practices that have been witnessed.

Mr. Speaker, Sir, having read the report, I do not know how this House will fail to agree with the findings of this Committee and grant the wish of the citizens of Wajir

County, and by extension, the Republic of Kenya. This is a lesson and a wake-up call to many governors to know that if they practice these issues in their counties, they will catch up with them at a particular time.

We must laud County Assembly of Wajir, and the rest of our county assemblies need to learn from them. At this time, it is not very common to find county assemblies prosecuting and raising weighty issues as raised in this case. We know many county assemblies are under the capture of their executive. They may not find fault with the county government perhaps because maybe they have been roped into the schemes being described here.

Although the report did not establish the charge on failure to report pending bills, it is a very common practice. It is an unfortunate practice that is creeping into almost all our county governments. I do not know if you know any person who is not related to or is a business crony of our county governors and they still trade and do business with various county governments. It is no longer possible.

You run a contract and then wait for two, three or four years to get paid. By the time your invoice is due, perhaps the administration has changed. That is the picture painted about Wajir County. Every time the County Government makes a requisition and millions are sent, you end up paying only four, five or six suppliers. What is more is that it is mostly the big, high value contracts worth Kshs40 million, Kshs50 million to 100 million that get paid. It is for reasons that we all know.

However, for the young ‘hustlers’ of Wajir County and other people who the county owes Kshs1 million or Kshs5 million never get their dues. Their businesses sink. That is the picture being painted here. We should not excuse such habits. In fact, that is one of the charges for which I do not know how the Committee found the Governor not culpable. On this one, I think the County Assembly properly laid its basis.

Fortunately, thanks to our Standing Orders and the Constitution, one of the charges has been confirmed. It leaves us with no option, but to agree with the guilty verdict passed. This is because it is a composition of all these other maladministrative practices described in Wajir County. The County Assembly may not have sufficiently prosecuted and provided evidence for their case as per the opinion of the Committee. However, at least, they laid the basis for this one particular charge.

Mr. Speaker, Sir, I agree with the findings of the Committee. I will be waiting for the opportunity to cast my vote in support of this Report.

The Speaker (Hon. Lusaka): Sen. Ochillo-Ayacko, proceed.

Sen. (Dr.) Ochillo-Ayacko: Thank you, Mr. Speaker, Sir. As a House, we have a very challenging responsibility. We have an onerous task before us which is to be the equivalent of the High Court; to sift through evidence, listen to submissions, look at facts as they are, and decide. Our decision may ultimately send a Governor home or give a lease of political life to that Governor.

It has not escaped the attention of this House that the County Assembly of Wajir, by numbers of slightly more than 30 out of about 40 MCAs agreed to forward the request of impeachment to this House. It has also not escaped the attention of this House that a

Committee appointed by this House unanimously decided that impeachment or confirmation of the charges was the way to go.

Several charges were brought before this House and most of them fell by the wayside. Only one charge has been left standing. In my shallow and hollow analysis, it appears to be the least grave charge. That is what appears to be, but nevertheless, it is a charge and the Committee has come forth and said it is worthy of impeachment. That is what is before us.

Mr. Speaker, Sir, I was looking at the Report before us and came by the view of impeachment from other jurisdictions. The one that caught my attention is the one of Philippines, where Sen. Santiago opined that impeachment is a quasi-judicial and quasi-political process.

Now, politics is a very strange animal. At least, in class, I was taught about a judicial process, which must be correct in its procedure. A process must be right and logical in its content. It must equally be logical and right in its outcome, so that the procedure of fairness is inbuilt through it with the eventuality that the outcome is a just and fair for the parties that brought the matter before the institution that needs to consider it. In this case, it is the Senate of Kenya to consider the culpability or non-culpability of the Governor of Wajir County. That is what we are debating today.

The other arm of that definition is also captured in the now famous case of Hon. Wambora when this House confirmed his impeachment; that impeachment is both quasi-judicial and quasi-political. In the understanding of ordinary but mischievous people, politics is something popular, but not necessarily right. That is what mischievous analysts of political definitions think about it.

Mr. Speaker, Sir, for a politician, leadership is also about what is right and not necessarily popular. Often, leaders must make difficult decisions and forget the unpopularity attendant to such leadership positions. That is also the other definition.

I am sure, at the end of the day, there will be a lot of talk about what this House is likely to do. Are we making a popular decision which is right or a popular decision which is wrong? I think the counsel for the Governor introduced something he called the Pontius Pilate moment. It happened many years ago, and to set the record straight, I do not think any of us was present; we just read about it. To set the record straight, I do not think none of us was present; we just read about it. I was not there, so I do not know. I read about it just like the counsel. Pontius Pilate many years ago was faced with a similar decision.

According to Pontius Pilate, he did not see the innocence or guilt of Jesus Christ. Before making his final verdict, he decided to ask the people who were baying for the blood of Jesus, “Why do you want me to crucify or to sentence this innocent person to death?” Those fellas said that he had broken so many laws according to them. When he pressed on they told him, “No, do not today release the other gentleman who was a known criminal and peddler of bad behaviour called Barabbas, but we just want you to deal with this innocent guy.”

At the end of it, the verdict was that Jesus was convicted on the popular will of those Jews. It is them who demanded for the conviction of Jesus and it is them who had him convicted and crucified. So, that is an ambiguity that may - I do not know how this House intends to vote - arise at the end of the voting.

One of the questions that I ask myself as I go through this report is: Was the verdict of the County Assembly of Wajir popular? It appears that the number that came up and supported it was indeed a large number and could be described accurately as a popular movement to impeach the governor. The second question because this is a quasi-political process was that popular decision right? I do not have the answer to that and I keep groping in the dark.

I have looked at the report of the Committee and I have also noticed that it was quite popular with the Members of the Committee. I am trying to unravel it and find out if it was right. Since Sen. Omogeni is my good friend, I will go to him so that he whispers to me whether it is right or not. I cannot at this stage go through it thoroughly because there are other charges that were carried over from Wajir by the County Assembly that the Committee of the distinguished Senior Counsel found to have been wrong. We will consult on that and see how to arrive at consensus between the two of us.

I also understand and in previous decisions of this House, that issue of popularity of the verdict and unpopularity of it has been debated, not necessarily in this Chamber. I remember that one of the Governor of Kirinyaga is something that is still being debated to date. I am baffled at the fact that were we right or were we wrong. I am also looking at the one of Kiambu, that happened when I was out of the country trying to talk to God somewhere on other issues that were affecting me. However, the debate is still out there, were we right or were we wrong.

That one of Nairobi came here, it found me here and I am sure that if you brought the same voting or debate now, what will be the conclusion? Were we right or were we wrong?

So, this is the Pontius Pilate moment that the counsel asked us to deal with. I am still thinking about it today, was Pontius Pilate right or wrong? That is a debate that we can analyse, but it is very hard to know what was in his mind. It is also very hard to know what was in the minds of those Jews, including the Sanhedrin who were asking very loudly for the blood of Jesus. Unfortunately, or fortunately, we forgive them that through that blood we got saved. So, that is the hardest decision here.

I want to say that politics is about power, very many interested parties and very many political forces, including 2022 and many other factors. Are those factors right or are they wrong? Those are some of the difficult questions that politicians have to ask themselves. I do not know what has informed the position of my brother and very good friend Sen. (Dr.) Langat of Bomet County whose rivers flood our place and I wish we could reverse the course of those rivers-- He was probably voting about the political rightness of the process or the legal correctness of the verdict. So, all that is what was captured.

When I say this people might think I take this stuff lightly. Impeachment is the replacement of the vote of no confidence. In fact, during the era when we had vote of no confidence, it did not matter whether you did wrong or not. The measure was how confident were the people in your leadership? How was your leadership fitting in the future discourse that was going on? So, you will have an executive or a minister resign because perhaps those who had put them in that place have lost confidence in their conduct. So, these are very many problems and I have to juggle them.

I am just about to make my decision when I am about here, but I need to consult with my brother Sen. Omogeni. I hope that out of that consultation, I will be able to make the right decision.

Mr. Speaker, Sir, I would like to say that before we as a House constituted this Committee, there was scepticism as to whether a Committee was equal to what is expected of Senate. That scepticism was said inside this House by ourselves and was riddled about out there by the media was the subject matter of a very animated and robust debate out there.

Today you can see that the Committee has brought a report that there are various opinions about, but the quality and its content has not been impugned. That is an accolade we must pay to the entirety of that Committee. Most Committees when their reports are brought here, there are loud murmurs about what may have transpired that may not have been part of the Committee were considerations that may have been out there that are not part of the Committee work.

In future, let us all trust continue trusting in our committees and we hold them accountable. We are all in one Committee or the other. The outputs or products of those Committees have never been doubted or talked of in a demeaning manner because that is how the House works. The House works through Committees. This one has done a good job. You can be on the other side or this side and debate about it the way you think without imputing improper motive.

I want to thank the Committee and the House and urge all of us to give serious consideration when voting for this report and serious considerations when looking at it in terms of process which is about procedure as prescribed in terms of content which is about the evidence that was given to us and in terms of output which is contained in the report.

Mr. Speaker, Sir, I beg to rest and now look for my decision.

Sen. Cherargei: Thank you, Mr. Speaker, Sir, for this opportunity. The process of impeachment is not legal *per se*. It is more of a political process that has been established.

Mr. Speaker, Sir, on a lighter touch, the Kenya Airways (KQ) just reported that unfortunately, Stella is not coming back; the famous song that she is the first lady to 'eat' an international fare unlike the local ones who 'eat' matatu fare.

Mr. Speaker, Sir, from the onset this process is so sacrosanct and important. We are not only making a decision about the Governor, but also the people of Wajir. The impeachment process - as I have indicated earlier on - is not a legal process. When you

look at the jurisprudence of impeachment across the world, some people have been impeached from office not on criminality issues, but sometimes on civil issues, incompetence and morality issues. Therefore, it is more of a political process as opposed to a legal process.

Mr. Speaker, Sir, when Wajir County Assembly impeached the Governor before us had 17 accusations levelled against him. For some of us who were following keenly, we wanted to give the Governor, the County Assembly and the great people of Wajir County - who are more than 755,000 or thereby; 49 persons per square kilometre and one of the largest county in terms of land mass in this country - an opportunity for their case to be heard. They have had their case heard in this House.

Under Article 181 of the Constitution of Kenya, 2010, the grounds of impeachment of a governor have been set out properly. On those four grounds, the County Assembly tried to raise their concerns.

I want to salute the Committee. I have read their report. They have tried to be as thorough as much as possible. They have tried to give a snippet of what they think should be right. There was push and pull. Some Senators wanted Plenary while others wanted the Committee way. I think this is the first time the Senate is more confident in the Committee work.

I want to assure the people of Wajir and Kenyans at large that Parliament - I said this when we were forming the Committee - can either work through Plenary or a Committee. The fact that committees work across the country means that they are doing their parliamentary work. I want to appeal to many people who do not understand the role of the parliamentary process that Parliament can work through Plenary or the Committee.

Article 181 of the Constitution, and Section 63 of County Government Act is pivotal. The Committee has been looking around the four issues, which include gross violation of the Constitution or any other law; that the County Governor has committed a crime under national and international law, abuse of office or gross misconduct, physical or mental incapacity. Those were the fulcrum that the Committee was trying to look at.

Mr. Speaker, Sir, many people have been arguing what is the role of county governors? Governors enjoy an executive authority that is not only vested on county governor, but also on the executive as provided under Article 226 (5) of the Constitution. Therefore, they enjoy executive authority.

I want to advise the Governor, if he survives or not, if the holder of a public office, including a political office directs or approves the use of public funds, contrary to the law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not. It is very important that as we discuss people who are facing impeachment process in any forum, including here, they must be aware that the liability does not stop here. If there are any liabilities that will be held somewhere else, they must be ready. There are so many recourses that the people of Wajir, the Governor and others; that risk their liability after this process is concluded by the Senate.

Mr. Speaker, Sir, I have looked at the report. I have read allegations raised by the County Assembly. We appreciate the role the county assemblies are doing across the country. We know their role. They provide what we call primary oversight that we have as a nation. That is the authority that they are vested.

The Senate, county assembly and county governments must partner for our devolution to work, effective and efficient, so that it does not run into inefficiency or become moribund. This is because the ultimate consumer of service delivery is the ordinary Wanjiku. Going by that fact, there are so many issues that were raised like the employment process.

There is an officer who is under investigation or was interdicted. County employment is done through the County Public Service Board. There was no link and nexus that could show that the Governor directly influenced in a specific way the employment of a specific officer. That was a personal staff, the adviser as provided for. When we appoint our Personal Assistants (PAs), security and others, we appoint on that basis.

Secondly, in this report, the MCAs or the county Assembly report say that the chief officers and County Executive Committee (CEC) Members do not have a capacity. We agree these are political appointees. However, the law is very clear that the CEC Members and COs must be vetted and approved by the county assembly. The question is: Why did the County Assembly approve Cos and CEC Members that do not have capacity? Even if they approved and they realized they did not have capacity, what recourse have they done? Have they done Motion of no confidence on those CECs or COs?

This is because we amended the County Governments Act. I was there when that amendment was being proposed. It is now the law. What other measures has the County Assembly used? When we impeach the Governor, whether he survives or not, the MCAs across the country must understand that they have tools at their disposal. I want to ask the MCAs even if we finish this process, either way, they must go back and use those tools they have. If a CEC Member or CO does not have capacity, is incompetent, that CEC or CO must be removed through a vote of no confidence. That is the power that MCAs have.

Mr. Speaker, Sir, I was very keen when I was told there is a supreme leader, a lady, the spouse of the Governor by the name Mrs. Khaire Omar. I was shocked that allegedly she was receiving over Kshs305 million through proxies. I was very keen because I was told the spouse of the Governor was sitting in Committee meetings. I was in that forum. They said there was no minutes to prove. I want our MCAs who in this House today to know that deal with evidence. I wish they could give us minutes where the spouse of the Governor was making decisions on behalf of the county government. It is not placed anywhere in the law that the first lady should occupy certain position or making executive decisions, but there should have been nexus.

There was an allegation that Kshs3505 million was deposited in her Kenya Commercial Bank (KCB) account through the companies that were being created. At the

end of the day, there was no nexus to prove that the spouse of Governor, Mrs. Omar, and the daughter called Farhiya--- I hope she is not related with the Senator we have here. I believe it is just a name.

Mr. Speaker, Sir, there was no nexus even the banking deposit that they gave us, how can we convict?

When you bring a document that is not authenticated, the evidence in law is not clear. We know that in River Road, here in Nairobi, I can cook and come up with an unauthenticated letter and present it to the House. If we are not careful, because this process enjoys *quasi*-judicial mechanism then we can be admitting anything.

My wish and prayer as I advise the Members of the County Assembly (MCAs) as they go back, make sure any document you submit before the Senate is authenticated. It might look politically correct and sensational to say the spouse of the governor is running affairs in Wajir County Government, but you must provide the nexus so that it allows us to convict or acquit the governor on that basis.

On that, I was keen; I have looked at the Report and the Kenya Commercial Bank (KCB) statement which was not authenticated. In future, we do not want first ladies running county governments and we hope they will stick to their lanes.

In one instance and all of us followed the allegation by the County Assembly that the governor holds - Mr. Speaker, Sir, you have been a governor - meetings that relate to running of a county in his official residence. You expect the spouse to be there to prepare tea for you. If you do not take tea and nice things in the governor's mansion, you might think the governor is mean and, therefore, the spouse must be there.

I agree with Senators and I wanted to be short because they say brevity is the soul of wit. On the issue of health, under Article 43 of the Constitution, the right to health and economic social rights is a fundamental right. It is in the Constitution that the President of the Republic of Kenya, President Uhuru must give us reports on the status of implementation of economic and social rights. The right to health is key.

I have looked at the issue of health and our counties are in a crisis. As we talk, in March 2021, Nandi County Assembly through an *ad hoc* Committee tabled a report on an investigation into COVID-19 funds. They found that in Kapsabet County Referral Hospital there was a dysfunctional oxygen plant. One lady allegedly died due to lack of oxygen.

The problem of health is rampant, but the question is whether it is a threshold to impeach a governor. If we were to impeach a governor, does it mean - I want Sen. Cheruiyot to listen to this - that if there is dysfunctional, I agree the governor should be careful and ahead of things because he has the executive authority. Nonetheless, is provision or lack of health facilities a ground to impeach a governor?

Mr. Speaker, Sir, I have said this before and the HANSARD can bear me witness that the National Treasury under Cabinet Secretary Ukur Yattani under Article 219 has been violating the law. As we talk, 2020/2021 Financial Year is coming to an end and counties are owed more than Kshs100 billion.

How do you want counties to function when the National Treasury is violating Article 219 of the Constitution by not releasing sufficient funds? I wish when we were discussing this impeachment, almost the last tranche of Wajir County government funds was deposited in the accounts.

I have seen they have allocated Kshs2.4 billion to the health department in Wajir County Government executive. As we discuss the impeachment of the governor, we should be keen to ask the National Treasury to release money so that our counties can function and services delivered.

Sen. M. Kajwang' raised an important point. He said at the national level, you will find a Cabinet Secretary in charge of health discussing irrelevancies as opposed to stating when we are getting the second AstraZeneca vaccine. Should we impeach President Uhuru Kenyatta? Should we move a Motion of no confidence against Mutahi Kagwe because he is busy discussing BBI as opposed to telling us when the vaccines will be available in the country?

Those are serious issues that we must ask ourselves. As we talk today, Kenyans are yet to receive vaccines. The only strategy or - I do not know whether it is economical, they are saying in July there is the fourth wave of COVID-19 – weapon the Government will put in place is lockdowns and restrictions. You need to scale down to the level of Wajir County. The issue of health is personal and we need concerted efforts on how to deal with the wave when it comes.

Finally, I support the County Assembly on the move for autonomy. There is a gap. We need to put legislation so that they can have a vote in the National Treasury. We had the issue of Mombasa County and I remember we sat in the Devolution and Intergovernmental Relations Committee and discussed with the County Assembly and County Executive on where the funds were being starved by the Executive so that the County Assembly does not function properly. The County Assembly should be autonomous going forward into the future.

Since I will make my decision after consulting the oracles and talk to Koitalel Arap Samoei and many others, I want to appeal to the people of Wajir County Assembly and specifically the Governor, if you survive this, there is a lot of work that needs to be done in Wajir County Government.

There is a Petition on corruption in Wajir County. Not all is well in Wajir County. Governor, even if you survive, you must go back and deliver for those people. You have served as a Cabinet Secretary and an Ambassador, why do you not use those managerial skills to better the lives of Wajir County Government. I have heard you have been number two in health diagnostic.

You have presented your plea here, but we want to see that into reality. In the interest of time and my colleagues, we have a Session early tomorrow. Allow me to rest and say when the time comes, as Sen. Wetangula would say, we will make that decision and cross the bridge when we get there.

The Speaker (Hon. Lusaka): Sen. Faki, proceed.

Sen. Faki: Asante sana, Bw. Spika kwa kunipa fursa hii kuchangia ripoti ambayo imeletwa na Kamati Teule kuhusiana na kuondolewa mamlakani kwa Gavana wa Wajir. Kwanza Kabisa ningependa kuipongeza Kamati hii kwa kuweza kuja na ripoti ambayo imekubalika na wanachama wote wa Kamati.

Ni nadra sana kuweza kupata Wanakamati kukubaliana na masuala ambayo yamewekwa mbele yao. Kwa hivyo, naipongeza Kamati ambayo inaongozwa na wakili Seneta Okong'o Omogeni pamoja na wanachama wote ambao walikuwa wakihudumu katika Kamati hiyo.

Bw. Spika, jambo la pili ni kuipongeza Bunge ya Kaunti ya Wajir kwa kuweza kufanya uchunguzi na kuleta mashtaka haya mbele ya Kamati na Bunge la Seneti, na wakaweza kudhibitisha. Ijapokuwa wameweza kudhibitisha shtaka moja peke yake.

Bw. Spika nimeipitia ripoti hii kwa mtazamo fagia, yaani kwa haraka haraka, na nimeona kwamba baadhi ya yale mashtaka ambayo yaliweza kuwasilishwa mbele ya Bunge hili yaliweza kudhibitishwa ijapokuwa Kamati iliweza kuwa na uamuzi tofauti.

Mashtaka yote ambayo yalifikishwa mbele ya Bunge la Seneti ni mashtaka ambayo ni magumu sana ama ni *serious* sana, kiasi ambacho kinaweza kumpeleka nyumbani gavana wa Wajir. Tukiangalia shtaka la kwanza linalohusu kutoajibika katika matumizi ya rasilimali za fedha za Bunge la Kaunti ya Wajir kinyume na vifungu vya 201(a) na 183 vya Katiba yetu na sheria ya 149 and 169 vya *Public Finance Management (PFM) Act, 2012*. Ijapokuwa mashtaka haya hayakuweza kuthibitishwa, ni wazi kwamba ushahidi ulikuwapo wa kuhukumu au kupata na hatia Gavana huyu kuhusiana na swala hilo.

Bw. Spika, shtaka la pili lilikuwa linahusu uajibikaji; ukosefu wa uajibikaji juu ya matumizi ya rasilimali za Kaunti ya Wajir na vile kushindwa kuwajibika kutoa hesabu za fedha kiasi cha bilioni mbili zilizotumika kama madeni ambayo yamelimbukizwa. Shtaka la tatu dhidi ya Gavana huyu ni kushindwa kupeleka *Medium Term Strategy (MTS)* ya mwaka wa 2020/2021. Shtaka hilo lilipelekwa katika Bunge la Kaunti la Wajir mwezi wa tatu. Ni wazi kwamba shtaka hilo limethibitishwa mbele ya Kamati Teule.

Gavana wa Kaunti ya Wajir pia alishtakiwa kwa kosa la kukiuka vifungu 176(i) na 185 vya katiba. Maelezo ni kuwa Gavana alipuuza Bunge la Kaunti la Wajir katika kupeleka rasilimali zinazofaa katika bunge hilo la kaunti. Ni wazi kwamba *Public Finance Management (PFM) Act, 2012* inasema kwamba fedha za serikali ya kaunti na fedha za bunge la kaunti zinafaa kuwekwa tofauti lakini kufikia sasa, mabunge mengi ya kaunti yanategemea ruzuku kutoka serikali za kaunti. Fedha hizo hutolewa siku ambayo gavana au waziri wa fedha wa kaunti ile anapopenda. Nilihudumu katika kamati ya uhasibu la bunge hili. Tulishuhudia tukio hilo katika kaunti nyingi na sio maajabu swala hilo linaendelea. Mara nyingi, mabunge ya kaunti yanashindwa kutekeleza majukumu yao wakati pesa zimezuiliwa na serikali za kaunti wakati pesa hizo vinapaswa kutolewa kwa wakati unaofaa.

Bw. Spika, pia kulikuwa na shtaka la kukosa kuteuwa kamati ya *County Budget and Economic Forum* kinyume na Kifungu cha 187 cha *Public Finance Management (PFM) Act, 2012*. Ingawa shtaka hilo halikuweza kuthibitishwa na Kamati Teule, ilikuwa

wazi kwamba hapakuwa na taratibu zilizowekwa kutekeleza kifungu hicho cha sheria. Sheria inasema kuwa kamati hiyo inafaa kuteuliwa haraka iwezekanavyo. Gavana huyu alichaguliwa mwezi wa nane mwaka wa 2017. Sasa tuko mwezi wa nne mwaka wa 2021. Takriban miaka minne zimepita, Gavana huyu akihudumu bila kamati hiyo muhimu kulingana na sheria.

Shtaka lingine dhidi ya Gavana huyu ni kuwa alikosa kutoa taarifa rasmi kwa Bunge la Kaunti ya Wajir kupitia *county address*. Hiyo ni moja kati ya mambo muhimu kwa sababu ile hotuba gavana anayotoa kwa bunge la kaunti, Gavana hutoa mwongozo wa mambo anayotarajia kufanya katika mwaka ule. Ni muhimu kwa magavana kutoa hotuba hiyo ili kuhakikisha kwamba wabunge wote wa bunge la kaunti wana uelewano kwamba sheria zote zitakazoletwa katika bunge lao mwaka ule zitakuwa za mtazamo gani. Swala hilo pia halikuweza kuthibitishwa na Kamati Teule.

Bw. Spika, vile vile kulikuwa na shtaka la kukosa kuthibitisha kupeleka katika bunge la kaunti ripoti ya mwaka kuhusiana na utekelezaji wa sera na mipango ya baadaye. Hili pia ni jambo muhimu kwa serikali zetu za kaunti kwa sababu zinaipa fursa mabunge hayo kujua ni mambo gani serikali za kaunti zinaweza kufanya na njia ambazo wananchi wataweza kuchangia maswala yale.

Kwa muktasari, hayo ndio mambo ambayo nimeweza kupitia katika ripoti hii. Kamati Teule imethibitisha kwamba shtaka moja limeweza kuthibitishwa. Hii ina maana kwamba sisi kama Maseneta, tunapaswa kukubaliana na ripoti ya Kamati hiyo kwa sababu wameweza kuthibitisha kwamba kumekuwa na ubadhirifu wa fedha katika Kaunti ya Wajir kiasi ya kukosekana baadhi ya huduma za afya katika kaunti ile.

Bw. Spika, tumesema mara kwa mara katika bunge hili kwamba afya ni huduma muhimu ambayo inafaa kutolewa kwa usawa kwa wananchi katika kaunti zetu. Kumekuwa na ubadhirifu wa fedha za COVID-19 takriban kaunti zote 47 katika Jamhuri yetu ya Kenya. Tumeona kwamba ukosefu wa huduma za afya hususan katika kaunti zilizo mbali na miji mikuu kama kaunti ya Wajir ilioko mbali na miji mikuu. Wakaazi wa Kaunti ya Wajir hulazimika kusafiri kwa muda mrefu ili waweze kupata huduma za afya ikilinganishwa na kaunti za mjini kama Nairobi, Mombasa na Kisumu.

Bw. Spika, swala kuu ni kwamba, je, hili swala hilo moja lilothibitishwa, laweza kumpata gavana wa Kaunti ya Wajir na hatia ya kumwondoa mamlakani? Ndio, kwa sababu Gavana hakuweza kutekeleza majukumu yake kulingana na sheria ambayo imewekwa nchini. Maseneta wengine wamejadili kwamba makosa kama hayo yapo pia katika serikali ya kitaifa. Seneta wa Nandi alisema kwamba hata Mhe. Mutahi Kagwe, Waziri wa Afya katika Serikali ya Kitaifa pia anafaa kutolewa ofisini lakini swala ni kwamba hata yeye anaweza kuleta hoja hapa bungeni na ikithibitishwa, pia Mhe. Kagwe ataenda nyumbani.

Bunge la Kaunti ya Wajir wameweza kusema na kutenda. Wameleta mashtaka katika Bunge hili na mashtaka hayo yameweza kuthibitishwa. Bunge hili halina budi ila kumpeleka gavana wa Kaunti ya Wajir nyumbani ili aende akafanye mambo mengine.

Mwisho ni kwamba tumeona uhuru wa bunge la kaunti ya Wajir. Tungependa kuona mabunge yote 47 katika Jamhuri ya Kenya yakiwa na uhuru wa bunge la Kaunti ya Wajir kwani hilo ndilo litasaidia wananchi kutekeleza ugatuzi katika nchi yetu. Hatuwezi kuwa na mabunge ya kaunti ambayo mara nyingi yako kitandani na magavana. Hiyo ni kurejesha nyuma maazimio ya wale ambao walileta ugatuzi katika nchi yetu ya Kenya.

Bw. Spika, naunga mkono ripoti hii. Bila shaka, nitapiga kura ya kumpeleka gavana huyu nyumbani. Asante sana.

The Speaker (Hon. Lusaka): Proceed, Sen. Murkomen.

(Sen. Cheruiyot consulted loudly)

Sen. Murkomen: Thank you, Mr. Speaker, Sir. I do not know why Sen. Cheruiyot is excited with my contribution.

This is a very important exercise. As a Senate, we have done this over and over again; at least for those of us who are in the second term. We did many impeachment exercises in the 11th Parliament. The 12th Parliament is historic because it has successfully impeached at least two governors.

Impeachment is a process of accountability as per the Constitution. Accountability does not mean that the Governor himself should be directly culpable. It includes vicarious liability which is by virtue of its position, things that they should do or should not have done to ensure that the county progresses.

This Committee chaired by Senior Counsel Sen. Omogeni has done a very good job in coming up with a unanimous, well detailed and thorough Report that gives confidence to the House. Some of the reports of Committees find the governors culpable and some do not. That does not mean that those who find governors culpable are more devolutionist than those who find the charges unsubstantiated.

Not too long ago, the Governor of Kirinyaga, hon. Waiguru, was brought here and a Committee was established. Sen. Farhiya who is the Deputy Majority Whip was a Member of that Committee. Despite public outcry and pressure, the Committee came here confidently and said they could not find Gov. Waiguru culpable.

The Speaker (Hon. Lusaka): What is your intervention, Sen. Farhiya?

Sen. Farhiya: I just want to make a clarification that I was not part of that Committee that was looking into the impeachment of Gov. Waiguru. I want the record to be straight.

Sen. Murkomen: Thank you, Mr. Speaker, Sir. I apologise to Sen. Farhiya. It is her actions of passionate campaigning for the defence of Gov. Waiguru that confused me. She was the chief lobbyist in the Chamber to ensure the Governor was saved.

The point I am trying to make is that the Senate is here guided by principles of law and the desire to protect devolution. Whether we vote to impeach the Governor or not, it will still be within our responsibility in defending and protecting devolution. When governors are brought here, it is assumed that especially those of us who do not come from those counties, will rise above our personal parochial interests and look at the

evidence, facts and state of devolution and come to a conclusion that protects the integrity of the Senate, but also fosters the growth and development of the law and devolution.

I am convinced that this Committee spent a lot of time to do a very thorough job. Public outcry of the newspaper reports, my friends who come from Wajir and the people I interact with said a lot of things about the county government and the governor. There were 15 charges on the gross violation of the Constitution and three charges on abuse of office.

I would have assumed the Report would have come with an overwhelming verdict that says the Governor has committed so many violations. I am surprised the Report finds the Governor not culpable for many things that have been said about him.

We have impeached many governors for failure to account for financial resources, lack of accountability of management of resources, failure to have a medium strategy on Financial Year 2020/21, violation of Article 176 and 185, failure to establish County Budget and Economic Forum, failure to deliver an annual state of the county address, failure to submit annual reports of implementation status of county policy, failure to establish audit Committee, failure to seek approval of payment and emergency fund, operation of various bank accounts of local commercial banks, allegations relating to public finance management *et cetera*. A verdict was returned by a Committee chaired by non-other than a Senior Counsel that all these charges were not substantiated.

What did the Committee do? It found in one of the charges, which was gross violation of Article 227 of the Constitution on the rights to health. A submission was made to the Committee that a right to health was violated in Wajir.

Our current Constitution is one of the most progressive constitutions not just in Africa, but the world. It is one of the few constitutions in Africa and the world that recognizes what we used to call second generation of rights. Those are the socio-economic rights, which include the right to health. From this very progressive Constitution that guarantees the right to clean water, social security, right to education, accessible and adequate housing, these provisions expect national and county governments to perform a positive act in achieving these rights.

The Committee was right to interrogate the County Government of Wajir activities and acts in achieving socio-economic rights, particularly the right to health. I say so because this is a very important subject because it discuss the progressive nature of our Constitution. We are doing so when we have a national debate about changing the Constitution, particularly after the very sound, detailed and amazing judgement that was given by a bench of the High Court led by Prof. Joel Ngugi. He is a Professor of law and graduate of Harvard University. He was also a Professor of law at the University of Washington for a long period of time.

When I studied law both at undergraduate and post-graduate level, Prof. Ngugi was one of the professors whose writings we used to refer a lot to, especially on human rights and international trade.

When such judgments are made, we should, as a country, celebrate because they remind us of the importance of this Constitution. When such processes of impeachments are brought before us, we must take time to look at them, as a Senate, and ask ourselves, “What was expected of hon. Gov. Mohamud in achieving Article 43 of the Constitution? What is the evidence that was given to us?”

The evidence given to us is contained in page 94 to 98 of the Report. In the Report the County Assembly said one thing and the county executive defended itself. The conclusion was that because health workers were not being paid, a renal machine was not working in the county government and an ambulance was not working, the Governor failed the duty to deliver Article 43 of the Constitution and, therefore, he is culpable of gross violation of the Constitution.

The question we should ask ourselves is: If this is the only violation we are going to find this Governor culpable, we must go back and ask ourselves if the achievement of socio-economic rights is just the role of the governor as a person. We must also ask ourselves what the County Assembly does. They say that they allocated resources in the budgeting process that amounts to 22 per cent of the budget of the county, which is a very positive attribute.

We must ask ourselves the next question. If the Governor is culpable, did the County Assembly of Wajir summon the CEC for Health? Did they at any time impeach or remove the Chief Officer of the County Government of Wajir or even write a report to indict the performance of senior health officers on the county?

In total, they would say: “We, as a County Assembly, found the ambulance was not working, the renal machine was not working, the staff were striking because their dues had not been paid, despite the fact that we had budgeted for it. As a result of that, we voted to remove the Chief Officer, the CEC and indicted senior public officers. We took the report to the Governor and required him to take action, but he refused to do so. He protected those public officers and is, therefore, culpable of violating Article 43 of the Constitution for the right of health of the people of the county of Wajir.”

Why am I making this argument? It is because the decision we will make as a Senate is not for now. It is for posterity.

It is for us to apply the similar standards not just to the County Assembly of Wajir, but also the Senate. One of the accusations against Wajir County Government is in relation to a renal machine that was bought using a programme that we have discussed in this House which is the Managed Equipment Services (MES) for national Government.

Mr. Speaker, Sir, a grant must be given by the national Government to run those machines. When the Report on MES was brought to this Chamber, we all remember the ‘mess’ itself in the MES report in relation to how money is given to national Government, management structure, and the procurement process of those machines.

We are now saying, for purpose of the working structure of the MES, we should impeach a governor yet the person responsible is the Cabinet Secretary (CS) of the Ministry of Health at the national level. There are certain things that do not add up in this report in relation to this particular charge.

Mr. Speaker, Sir, it must be known to the people of Wajir County and Kenya that as a Senate here, we have only one charge that has been brought to this House. There is only one charge that has been substantiated and that charge is in relation to implementation of health. As a Senator as I sit here even as I vote later, my conscience should convince me that the nexus between the ambulance and renal machine not working and the strike of the staff in Wajir County is directly proportional to impeachment of a governor.

If my mind convinces me to do so, then as I search my soul, sit down there and think about it, then I will vote accordingly. However, this is the only charge. This House is being asked to remove the Governor on only one charge. The staff have gone on strike, ambulance and renal machine are not working. No nexus was given as to the action of recommendation of the County Assembly or anything else that goes in that direction.

Mr. Speaker, Sir, I have more problems in my mind with whichever side I vote for. I have not had a problem with Senators here. Some of us voted to defend the Governor of Nairobi City County, but we lost. Some of us voted to remove Gov. Waiguru, we lost. Some of us voted to defend the Governor of Kiambu County, we lost. Some of us here voted to remove Gov. Wambora and we succeeded but the courts protected him. He is now the Chairperson of the Council of Governors (CoG).

A lot of things have happened in this Chamber. However, it does not mean that we should not discharge our responsibilities. We should. When we do so, we must discharge them in a manner that the world will see that we are acting in utmost fairness to those who are facing the charges in this House and also, to our responsibility under the Constitution.

Mr. Speaker, Sir, as I conclude, the Senate has a great responsibility this evening. The Senate must send a message that we have a responsibility to indict those that are found culpable. However, we have a responsibility to release those that are not culpable. We have a responsibility to protect devolution from those who are internally destroying devolution like governors, MCAs, and county staff by the manner in which they are implementing devolution or stealing public resources.

We also have a responsibility to protect devolution from those who are out there out of county governments who want to use the opportunity, position of power, resources to antagonize devolution and the running of county governments. Those responsibilities are equal. We have a responsibility of balancing those responsibilities.

Mr. Speaker, Sir, there were stories here about the first lady of Wajir County Government. She is the one. I have seen in newspapers somebody also referred in the Chambers that the first lady is running the county and that she has an office that is not recognized in law. Let us not be too overreaching. The office of first ladies in all county governments has been a position of generally about doing public good. This is because a wife of a governor has resigned their job to work with the governor. She wants to do something about women empowerment and public health.

Let us not forget that there is no office of the first lady of the Republic of Kenya. However, Her Excellency Margret Kenyatta has used her position as the first lady of this

Republic to do a fantastic job when it comes to fighting for public health. We have done so many programmes including some of us who have gone for a marathon to raise resources to buy medical equipment.

Mr. Speaker, Sir, she has staff, office and programmes that are paid by the Government of Kenya. That does not mean that now one day we will wake up and say the first lady of the Republic of Kenya is running programmes in the national Government that she should not. We must allow county governments to have that latitude to do certain programmes in their counties that the first ladies of county governments can participate in informing and assisting the county government to run the affairs.

In fact, as a House, we might even reach a stage where we must provide a legal framework where such programmes are done so that we give honour to the office of the first lady or the first gentlemen of the county. This is because other women are governors today and their spouses can have something they can do for public good using that opportunity they guard by having their spouses leading the county government.

Mr. Speaker, Sir, for that reason, I beg to say that I have considered and read the report. I pondered about it and I congratulate the Committee for the work done. However, now I have a constitutional responsibility given to me by the people of Kenya through the vote of the people of Elgeyo-Marakwet County to vote accordingly in a manner that protects the Constitution and institutions of the Republic of Kenya.

I thank you.

The Speaker (Hon. Lusaka): Sen. (Dr.) Ali, proceed.

Sen. (Dr.) Ali: Mr. Speaker, Sir, as the Senator of Wajir County, I would not want to dwell much on the issue. I want to thank the Committee for what they did at least by accepting that the health sector has a big problem. The impeachment is political, but there are a lot of issues which are there. Therefore, because of time and the way things are and people are very tired, I do not want to linger a lot on this.

I thank the Committee and the Members for saying what they needed to say. I hope that all will go well and the people of Wajir County will be protected.

The Speaker (Hon. Lusaka): I now call upon the Mover to reply.

Sen. Omogeni: Mr. Speaker, Sir, thank you. I will be very brief. First, I thank all the Senators for their contributions, those who have spoken this evening including Sen. M. Kajwang', Sen. (Dr.) Lang'at, Sen. Cheruiyot, Sen. (Dr.) Ochillo-Ayacko, Sen. Cherargei, Sen. Faki, Sen. Murkomen and the Senator of the County of Wajir, my good friend Sen. (Dr.) Ali.

I have listened to all the issues that have been brought before us by the speakers who have spoken before me. The answer as to how people will vote is on page 131, the issue of the threshold. When I started moving this Report, I did say that we were really trapped on the issue of the threshold.

Mr. Speaker, Sir, this being a House of precedent, we were also guided by the previous holdings of this House. I gave the example of the County Government of Kirinyaga and Taita Taveta County Government. I want to assure counsel for His Excellency the Governor, Mr. Ndegwa, that I did even speak on the issue of Article 37

because it is always good to accord equal rights under the law to each and every individual.

As the Senators retreat to exercise their right to vote, this is a matter that they should think about very carefully. They should not be influenced by the report. They should look at it objectively and exercise their own constitutional right to vote. We have been told about this being a Pontius Pilate moment. Again, I leave it to the conscience of each individual Senator. We have made our observations in the report.

Mr. Speaker, Sir, we know the provisions of Article 43 of the Constitution and what it says. As Committee, we grappled a lot, because the article says that every person has right to the highest attainable standards. We asked ourselves, what is the highest attainable standard? As I said, it was not easy for the Committee to pass a verdict.

We even asked, in terms of budget allocation from the national Government to counties, how much do you need so that you can promise counties that you have given them the highest attainable standards of health? We asked all those questions, and said that some may be beyond the Governor. This is because without the money, there is no way that the people can be assured of the highest attainable standards of health.

I hear what Sen. M. Kajwang' said. This may have a trickle effect. Again, as Senators, it is for us to decide what threshold we want to set. We said ourselves that so far, there are five pointers that a Committee or the House should consider before an impeachment. The allegations must be serious, substantial, and weighty. The violations must be vagrant and glaring. There must be as nexus, harm and loss of funds, and all these.

Therefore, having listened to the defense team of the Governor and to the submission made by the Senators, this is the Solomonic moment for the House. I urge Senators to step up, be Solomonic and cast their vote guided by their conscience.

I thank you, Mr. Speaker Sir.

I beg to reply.

The Speaker (Hon. Lusaka): Hon. Senators, I now put the question.

(Question put)

I ask that the Division Bell be rung for five minutes. The voting will be by roll call.

(The Division Bell was rung)

The Speaker (Hon. Lusaka): Order, Senators. As indicated in my earlier communication, this is a matter affecting counties. Therefore, voting shall be by County Delegation.

May I ask the two sides to bring their Tellers. Voting will be by Roll Call. Sen. Cherargei has volunteered to be Teller for the "Noes". Sen. Shiyonga is the Teller for the "Yes".

Let us have the Division Bell rang for two minutes and then we proceed. Those in the lobby, please, come in.

(The Division Bell was rung for two minutes)

(Several Senators walked into the Chamber)

Order, Senators. Ring the Division Bell for another two minutes. Take your seats.

(The Division Bell was rung for two minutes)

Okay. Tellers, take your positions.

(Sen. Cherargei and Sen. Shiyonga took their positions)

Let us proceed.

(Roll Call voting in progress)

The Speaker (Hon. Lusaka): Can we tally the votes?

DIVISION

ROLL CALL VOTING

(Question, that the Senate resolves to impeach the Governor of Wajir County (Hon. (Amb.) Mohamud) on the ground of Gross violation of the Constitution of Kenya, 2010, the County Government's Act, 2012; the Public Procurement and Asset Disposal Act, 2015 and the Public Finance Management Act, 2012, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Khaniri, Vihiga County; Sen. Kavindu Muthama, Machakos County; Sen. Kibiru , Kirinyaga County; Sen. (Eng.) Maina, Nyeri County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. Moi, Baringo County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ndwiga, Embu County; Sen. Nyamunga, Kisumu County; Sen. Poghisio, West Pokot County; Sen. Sakaja, Nairobi City County; Sen. Wamatangi, Kiambu County; Sen. Wambua, Kitui County; Sen. Wetangula, Bungoma County;

Teller of the Ayes: Sen. Shiyonga.

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NOES: Sen. Cherargei, Nandi County; Sen. Murkomen, Elgeyo-Marakwet County;

Teller of the Noes: Sen. Cherargei

ABSTENTIONS: Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Dr.) Ochillo-Ayacko, Migori; Sen. Omogeni, Nyamira County; Sen. Orengo, Siaya County;

The Speaker (Hon. Lusaka): Order, Senators! Take your seats. Hon. Senators, these are the results of the vote-

AYES: 25

NOES: 2

ABSENTIONS: 4

(Question carried by 25 votes to 2)

Applause

The Speaker (Hon. Lusaka): Hon. Senators, the net effect of the vote is that pursuant to Article 181 of the Constitution, Section 33 of the County Government Act and Standing Order 75 of the Senate Standing Orders, the Senate has resolved to remove from office, by impeachment, Hon. Mohammed Abdi Mohamud, Governor of Wajir County. The Governor accordingly ceases to hold office. Thank you.

ADJOURNMENT

The Speaker (Hon. Lusaka): Hon. Senators, there being no other business, it is now time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Tuesday, 18th May, 2021, at 10.00 a.m.

The Senate rose at 9.13 p.m.